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ENVIRONMENTAL ASSESSMENT BOARD

VOLUME: 404

DATE: Monday, November 2, 1992

BEFORE:

A. KOVEN Chairman

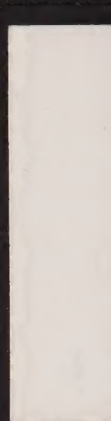
E. MARTEL Member

FOR HEARING UPDATES CALL (COLLECT CALLS ACCEPTED) (416)963-1249

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2300 Yonge St., Suite 709, Toronto, Canada M4P 1E4





Ontario

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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER of a Notice by The Honourable
Jim Bradley, Minister of the Environment,
requiring the Environmental Assessment
Board to hold a hearing with respect to a
Class Environmental Assessment (No.
NR-AA-30) of an undertaking by the Ministry
of Natural Resources for the activity of
Timber Management on Crown Lands in
Ontario.

Hearing held at the Civic Square,
Council Chambers, 200 Brady Street,
Sudbury, Ontario on Monday, November
2, 1992, commencing at 9:00 a.m.

VOLUME 404

BEFORE:

MRS. ANNE KOVEN
MR. ELIE MARTEL

Chairman
Member

A P P E A R A N C E S

| | | |
|----------------------|---|---|
| MR. V. FREIDIN, Q.C. |) | MINISTRY OF NATURAL |
| MS. C. BLASTORAH |) | RESOURCES |
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| MR. D. HUNT |) | |
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| MR. J.E. HANNA |) | ONTARIO FEDERATION |
| DR. T. QUINNEY |) | OF ANGLERS & HUNTERS |
| MR. D. O'LEARY | | |
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| MR. M. BAEDER |) | and WINDIGO TRIBAL COUNCIL |
| MS. M. SWENARCHUK |) | FORESTS FOR TOMORROW |
| MR. R. LINDGREN |) | |
| MR. D. COLBORNE |) | GRAND COUNCIL TREATY #3 |
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I N D E X O F P R O C E E D I N G S

ARGUMENT:

Page No.

Mr. O'Leary]
Mr. Hanna]

69064-

1 ---Upon commencing at 9:00 a.m.

2 MADAM CHAIR: Good morning.

3 Good morning, Mr. Hanna. Good morning,
4 Mr. O'Leary. We are ready to begin with your final
5 argument.

6 MR. HANNA: Thanks, Madam Chair and Mr.
7 Martel.

8 ARGUMENT BY MESSRS. HANNA and O'LEARY:

9 MR. HANNA: Madam Chair, Mr. Martel, on
10 behalf of the Ontario Federation of Anglers & Hunters
11 and the Ontario Northern Ontario Tourist Outfitters
12 Association Coalition I wish to thank you for the
13 opportunity for permitting Mr. O'Leary and I to appear
14 before you today and tomorrow to present our final oral
15 argument.

16 As you know, the members of the Coalition
17 have been active participants in this hearing since it
18 began and it has done its best to maintain an active
19 and effective role given the immense strains the
20 Coalition has faced in participating in a hearing of
21 this complexity and duration.

22 The Coalition has done its best in this
23 last leg of the timber management EA marathon to bring
24 forward some of the salient evidence that will assist
25 you in making your decision.

1 I would like to start out the Coalition's
2 oral argument by presenting to you some introductory
3 comments dealing with the following: First, I would
4 like to deal with the Coalition's view as to the
5 significant fundamental issues that must be decided in
6 this case.

7 Secondly, I would like to briefly review
8 for you the significance in the Coalition's mind of
9 your decision to its members.

10 Thirdly, I would like to briefly outline
11 for you the fundamental and underlying philosophy that
12 has guided the Coalition's case in terms of its
13 development and presentation and, finally, I would like
14 to provide to you a brief overview of some of the
15 detailed subjects that will be addressed over the next
16 two days.

17 Dealing first with the significance of
18 this Board's decision in this case. The Coalition
19 submits that the significance of the decision that this
20 Board will reach in respect of this application by the
21 Ministry of Natural Resources will overshadow all other
22 decisions made by all members of this Environmental
23 Assessment Board in all past decisions.

24 The Coalition holds this view for the
25 following reasons: One, in terms of environmental

1 assessment principles, very basic underlying
2 application, interpretation and history of this act
3 will be decided in many respects by your decision and
4 it will be decided in terms of a very important part of
5 environmental assessment in this province at the
6 present time and that is the whole class environmental
7 assessment process.

8 As you know, this is the first class
9 environmental assessment to come before the
10 Environmental Assessment Board and undergo thorough and
11 extensive scrutiny.

12 Your decision will, first, be
13 acceptability of this class environmental assessment;
14 secondly, your decision will be acceptability of the
15 planning process required to carry out projects within
16 the class of undertakings, will be the benchmark by
17 which all future class environmental assessments and
18 projects they are under will be measured from an
19 environmental planning perspective.

20 Given the number of class environmental
21 assessments and the frequency of projects being carried
22 out under class environmental assessments in the
23 province at the present time, your decision has far
24 reaching implications far beyond timber management.

25 Another aspect of this decision will be

1 your interpretation of environmental assessment
2 planning principles. These principles have evolved in
3 the province through repeated application and
4 interpretation of the Environmental Assessment Act and
5 through reviewing their application in specific
6 environmental assessments time and again.

7 The question is: How will these
8 principles be applied to the planning approval of the
9 projects within a class environmental assessment?

10 Your decision will provide direction to
11 us all in terms of how that should be dealt with in the
12 future.

13 In terms of timber management planning,
14 your decision will be a watershed not just in Ontario,
15 but throughout Canada. The eyes of many provinces are
16 on Ontario at the present time to see what future
17 direction they can expect in their jurisdictions given
18 the outcome of this hearing.

19 Ontario is often referred to as the
20 California of Canada in terms of environmental
21 regulations, seen as the leader, as the one that is
22 always breaking the new edge in environmental matters
23 in Canada.

24 Your interpretation of the environmental
25 planning requirements that timber management activities

1 must meet will be used as a benchmark by other
2 jurisdictions facing similar problems and issues that
3 you have faced for four and a half years.

4 This decision will obviously have
5 far-reaching implications for timber management in the
6 province as well.

7 As the counsel for the OFIA have
8 indicated to you, the forest industry plays a major
9 role in the economy and vitality of northern
10 communities. There is no question of that.

11 The same forest, however, that the forest
12 industry depends on also plays a central role in the
13 lifestyle and identity of northern communities. These
14 forests are the life of the tourism industry which is
15 also an important economic sector throughout the area
16 of the undertaking.

17 For example, the economic impact of
18 wildlife related expenditures alone in 1987, not
19 including fisheries, not including tourism, by only
20 residents is more than \$2.2-billion annually and
21 accounted for some 62,000 jobs. You have that in the
22 record in exhibit 2065, page 112.

23 Your decision will be of great importance
24 to all northerners and other residents of this
25 province.

1 I would like to deal briefly with the
2 social impact of your decision on northern communities.

3 The timber management planning process
4 that you will prescribe in your terms and conditions
5 will be central to the future of our forests and to the
6 welfare of many of the members of the public and
7 economic sectors that depend so vitally on this valued
8 natural resource.

9 Perhaps more importantly, your decision
10 will be pivotal to the social harmony of northern
11 communities. You have heard from the people in
12 satellite hearing after satellite hearing, the people
13 have articulated in their own way their experiences and
14 frustrations with the way that timber management is
15 conducted in this province.

16 You have heard from people from all walks
17 of life, from reclusive trappers to the now Attorney
18 General of Ontario. They have repeatedly time and
19 again expressed their concerns regarding the
20 inadequacies in the way that our forests are planned
21 and managed.

22 The Coalition submits that the potential
23 for serious social disharmony and even chaos is real if
24 the current ineffective timber management planning
25 process is not rectified.

1 Long lasting impacts on northern
2 communities, and in particular the relationships among
3 their citizens, the government and the forest industry
4 will occur unless immediate and effective action is
5 taken.

6 I would like to turn to the complexity of
7 the issue before you and that is timber management. I
8 submit to you that the challenge of the decision that
9 you are being asked to make is greater than any
10 previous decision on which members of the Environmental
11 Assessment Board have ruled in the past and this
12 challenge flows out of a number of things.

13 First, the immensity of the area of the
14 undertaking. It is almost beyond comprehension.

15 Second, the complexity of the natural,
16 social and economic environment in which timber
17 management activities take place.

18 Third, the long-term and effectively
19 irreversible impacts that timber management decisions
20 have on the forest landscape and on forest users.

21 You have heard from counsel of the OFIA
22 advise you not to tamper with the status quo. They
23 have stated: Do not fix it until it is broke.

24 The Coalition submits that this is a
25 short-sighted view of timber management. The Coalition

1 reminds you of the evidence of Dr. Jack Ward Thomas,
2 his candid way, and you may recall he provided to you
3 an analogy and he said: There once was a window
4 washer, 12th floor of the Empire State Building, he
5 looked up and he saw a man falling down through the
6 sky. He called out to him, he said: How is it going?
7 He replied: It is going fine so far. I don't want to
8 find out what happens when you hit the pavement, I
9 already know. You can't fix it after it is broke.

10 The Coalition submits that with timber
11 management, fixing the environmental damage to our
12 forest after it is broke may take 50 to 100 years, if
13 it can be fixed at all. We cannot afford to wait until
14 we are sure that it is broke before we start to fix it.

15 The Coalition submits that if the Board
16 is not convinced by now after all the submissions that
17 it has received from the public, from various parties,
18 of the frustrations and difficulties with the current
19 timber management planning process, it knows not of
20 what additional evidence it could have brought to the
21 Board to show that a major overhaul is vitally needed.
22 Timber management in this province is broke.

23 I would like to just talk a bit more
24 about the need for immediate action.

25 The Coalition will show through the

1 remainder of its oral argument that there is an urgent
2 need for immediate action. The Board, this Board, has
3 the unique opportunity and the Coalition implores this
4 Board to seize that opportunity.

5 We are at the crossroads in Ontario in
6 terms of how timber management will be conducted in the
7 future. Your ruling will strongly influence the nature
8 of the forests we leave to our children, our
9 grandchildren and their grandchildren.

10 Again, the Coalition implores this Board
11 to seize the opportunity that is before them, to use
12 its best knowledge and wisdom to craft a timber
13 management planning process for the province that will
14 establish and maintain public trust that is now sadly
15 lacking.

16 The Coalition submits that there may not
17 be a second chance. The Coalition is proposing that
18 approval of this undertaking last for at least six
19 years and if a hearing - Lord help us - is required at
20 the end of that, and this is any indication, the
21 Board's approval may well stay in effect for eight
22 years or even longer. If the Board adopts the proposal
23 of the Proponent, the Board's decision may stay in
24 effect for 15 years or longer.

25 Given the current rate of timber

1 management activities, and in particular harvesting and
2 access within the area of the undertaking, in 10 or 15
3 years the majority of the natural virgin forest within
4 the area of the undertaking will have been harvested
5 and accessed. There will be no second chance.

6 The Coalition in the next two days will
7 provide to you its best advice as to how to proceed
8 with the monumental task before you.

9 The Coalition submits there are a number
10 of important issues you must decide on. First, who
11 will decide? The Board must decide whether it will
12 delegate its authority and discretion to the Proponent,
13 as they have requested, and allow the Proponent to
14 undertake initiatives and changes to the planning
15 process over time that the Proponent deems are
16 appropriate.

17 In the alternative, this Board has the
18 opportunity to exercise its discretion, its authority
19 to require the Proponent to adopt specific practices,
20 to adhere to prescribed schedules.

21 The Proponent -- Mr. Martel?

22 MR. MARTEL: You went from who will
23 decide, and I don't get the connection to the second
24 point you made. Would you mind repeating it?

25 MR. HANNA: Certainly. In the

1 alternative, this Board has the opportunity to exercise
2 its discretion and authority to require the Proponent
3 to adopt specific practices and planning processes and
4 to adhere to prescribed schedules.

5 The Proponent not unexpectantly has
6 submitted to you that there is no rush, that things are
7 changing, there is no need for drastic action.
8 Basically they are saying: Trust us, we will take care
9 of things.

10 The Coalition submits the Proponent is
11 wrong. The Coalition submits that the public has
12 placed their faith and trust in the hands of this
13 Board, not the Proponent. They have attempted to put
14 their faith in the hands and trust of the proponents
15 over years and years and years of frustration.

16 The public has expressed to you in every
17 conceivable way the need for a wholesale change in the
18 way that timber management is carried out in this
19 province. The Coalition submits that the people are
20 right. Their concerns and issues will not evaporate.
21 They will not go away. They will only become more
22 intense in time.

23 Unless the fundamental deficiencies and
24 biases in the current timber management planning
25 process are effectively rectified, public trust and

1 resistance will become uncontrollable, as it has in the
2 past in Ontario, and is currently the case in other
3 places in Canada and other parts of the world.

4 The public has clearly articulated their
5 lack of trust in the ability of the government and a
6 particular proponent to respect their concerns.

7 I say to this Board with as much
8 sincerity and candidcy that I possibly can, that you
9 have the opportunity to redeem that trust and
10 confidence.

11 Timber management planning must be
12 conducted so that decisions are transparent, decisions
13 are accessible, that the public can determine the
14 future of their forests.

15 There is an underlying concern that has
16 perhaps unfair, I am not sure, but the Coalition has
17 had throughout this hearing and it has do with the
18 question of what's really the issue here? Is the issue
19 timber management planning? Is the issue environmental
20 planning applied to timber management? I say to you
21 those are very, very distinctly different concepts.

22 The Coalition submits that the
23 Proponent's proposal is clearly a timber management
24 planning process. The proposed planning process fails
25 to satisfy fundamental environmental planning

1 principles in many respects.

2 The basic elements of the timber
3 management planning process being advanced to you by
4 the Proponent have not changed materially from that
5 prescribed in the bible of timber management planning,
6 the Timber Management Planning Manual, published in
7 1986, nor have the basic elements of the process
8 changed substantially from that described in its
9 predecessor, the Timber Management Planning Manual
10 going back to the mid 1970s.

11 It is this timber management planning
12 process that is being brought forward to you by the
13 Proponent that has given rise to the broad and serious
14 distrust that you have observed through the many days
15 of satellite hearings and submissions by members of the
16 general public expressing their views and frustrations
17 with timber management in this province.

18 Now, the Coalition does certainly applaud
19 the Proponent for finally adopting, for example, the
20 proposal first advanced by the Coalition, now almost
21 four years ago, to employ public advisory committees
22 or, as they are now known, local citizens committees,
23 but local citizens committees are not a panacea. They
24 will not deal with the fundamental deficiencies at the
25 central core of the planning process.

1 Indeed, the presence of the local
2 citizens committee could increase the volatility of the
3 situation if an ineffective timber management planning
4 process is prescribed.

5 Local citizens committees will only be
6 effective if essential information and choices are
7 presented to their members in a comprehensive and
8 comprehensible manner.

9 The Coalition submits that an
10 Environmental Assessment Board, as you are, vested with
11 the responsibility of interpreting and applying the
12 Environmental Assessment Act, you must ensure that the
13 intent and substance of the environmental assessment
14 process set out in the legislation and as interpreted
15 through repeated application must be applied to plan
16 timber management activities. The Coalition submits
17 your job is to apply environmental planning to timber
18 management.

19 Another issue you have heard me speak on
20 and question witness after witness deals with the
21 matter of implicit versus explicit, judgments,
22 analyses. The Coalition submits that a generic issue
23 prevalent throughout many facets of this case revolves
24 around whether analyses and decisions will be required
25 to be explicit or allowed to remain as they were now,

1 implicit.

2 The Coalition throughout its attendance
3 at these hearings has emphasized the need for explicit
4 analytical predictive techniques in the decision-making
5 process.

6 The Proponent and other parties have
7 insisted on the impracticality and the lack of
8 necessity of these proposals to conduct the complex
9 process of designing and evaluating timber management
10 activities.

11 The Proponent has instead proposed to you
12 and to the people of Ontario that they should trust the
13 professional judgment of foresters to decide what is
14 best for them; what is best for the people of Ontario.

15 The Coalition submits that the public
16 wants to decide for themselves the future of their
17 forests. The public has asked you as an Environmental
18 Assessment Board to empower them with the information,
19 the analysis and the choices necessary for them to
20 express their will and they have understood was their
21 right under the Environmental Assessment Act.

22 The Coalition submits that its proposals
23 represent the bare minimum necessary for the public to
24 be provided with the information necessary for them to
25 develop meaningful opinions, provide useful comments

1 and to participate effectively in the management of
2 this province's public forests.

3 I would like to touch briefly on the
4 Coalition. I would like to deal first with the
5 question of: Is the Coalition really committed to
6 timber management planning or is this just a flash in
7 the pan?

8 It is important for the Board to
9 recognize the extent of the Coalition's commitment not
10 only to this hearing, but to timber management in the
11 province. What has taken place in relation to
12 intervenor funding is demonstrative of the level of
13 commitment.

14 It goes without saying that the Coalition
15 is extremely disappointed by the funding awards it has
16 received in the past, particularly relative to other
17 parties, but despite such setbacks the Coalition has
18 continued to participate in this hearing as a major
19 party.

20 This Board is probably not aware of the
21 specifics of the financial consequences of the
22 Coalition's involvement in this hearing, and I raise
23 the subject now not to complain about past decisions by
24 other boards, but to demonstrate the Coalition's
25 commitment to timber management.

1 Its continued participation in these
2 hearings, despite the great adversity it has faced, is
3 evidence of the fact that the Coalition will remain
4 involved in timber management activities in the future.
5 If this were not the case the Coalition would not have
6 spent three quarters of a million dollars of its own
7 money to participate in this hearing.

8 By comparison, the aggregate contribution
9 of all other funded parties from their resources
10 totalled only \$250,000. The Coalition has spent three
11 times as much as all other funded parties contributed
12 combined.

13 Despite receiving the smallest amount of
14 funding of any major party to this hearing, the
15 Coalition has been present and participated fully from
16 its outset.

17 We have gone through four rounds of
18 intervenor funding and we were essentially shut down in
19 the first two, and yet we still continued to
20 participate. While some funding was received in the
21 latter two awards, as the numbers indicate, the funding
22 had been insignificant in comparison to the cost of our
23 participation and that received certainly by other
24 parties.

25 The important note that the Coalition

1 asks the Board to accept is that its commitment is
2 genuine and future sustained involvement in timber
3 management is unquestionable.

4 Why is this Board's decision significant
5 to the Coalition? The Coalition recognizes the immense
6 significance of the Board's decision to its members
7 and, in fact, to the raison d'etre of the member
8 organization.

9 The issues at hand before this Board
10 concern the life blood of the members of the Coalition.
11 For the members of the Coalition to withdraw from this
12 hearing is unimaginable or withdraw from timber
13 management in the future, yet in the history of the
14 members of the Coalition they have never had to pay
15 such a high a price for what they believe in. The
16 Coalition has invested its trust in this Board.

17 As you know, the members of Coalition are
18 the residents of northern communities most directly
19 affected by timber management activities. The members
20 of the Coalition depend directly on the forest for
21 their livelihood, be it remote tourism, trapping or
22 logging. Many members of the Coalition depend on the
23 forest industry for jobs and local community stability.

24 The Coalition does not represent a
25 radical group of extremists. The Coalition represents

1 a broad cross-section of northern community residents.

2 You have heard from members of the
3 Coalition at satellite hearings, you have heard from
4 members of the Coalition as witnesses for the
5 Coalition, you have heard from members of the Coalition
6 as witnesses for the forest industry, you have heard
7 from members of the Coalition as witnesses for the
8 Proponent, which is their employer.

9 As was noted in the Coalition's Panel 9
10 evidence, the Coalition's proposals have been endorsed
11 also by a wide range of other interests, for example,
12 The Ontario Recreational Canoeing Association, The
13 Ontario Fur Managers Association, NORTHCARE, Shimano
14 Sport Fishing Initiative, The Ruff Grouse Society of
15 Canada and the Fur Institute of Canada.

16 The Coalition represents the mainstream
17 of the people of the north. These are reasonable
18 people. These are people who have a direct vested
19 interest in the vitality of the forest industry, the
20 tourism industry and of our public forests.

21 The proposals that the Coalition have
22 brought forward are not designed to close down the
23 forest industry. These proposals are not designed to
24 cause economic hardship for the northern communities in
25 which the Coalition members live. These proposals are

1 not designed to be self-serving.

2 The proposals that the Coalition has
3 brought forward are reasonable and well reasoned.
4 They are designed to put in place a fair and equitable
5 process whereby members of local communities can work
6 together cooperatively on a fair and equal basis to
7 arrive at difficult yet crucial decisions on the design
8 and implementation of timber management activities on
9 public forests.

10 Now, you have heard other parties suggest
11 that many of the Coalition's proposals are
12 unreasonable, and I would suggest to you that these
13 submissions are not accurate.

14 The Coalition is not asking this Board to
15 set aside vast areas of land for remote tourism or
16 wilderness, like some parties. The Coalition is not
17 asking this Board to produce moose above all else.

18 The Coalition is simply asking for a
19 reasonable and open planning process in which the
20 public is given fair and reasonable opportunities to
21 express their desires about the decision and
22 implementation of timber management activities on
23 public forests.

24 I will give you some examples of what I
25 think is evident of the reasonableness of the

1 Coalition. The Ministry of Natural Resources' proposal
2 to this Board is it does not require the collection of
3 any biological information - does not require. They
4 can do it, but it doesn't require the collection of any
5 biological information prior to the conduct of timber
6 management activities on public forests.

7 On the other hand, Forests for Tomorrow
8 is requesting biological information is collected for
9 all possible operating areas over the five-year terms
10 of timber management plans.

11 The Coalition submits that neither of
12 these positions are reasonable and has proposed a
13 reasonable compromise; namely that biological surveys
14 only be required for harvest and access areas in the
15 year immediately proceeding operations after timber
16 management planning is approved.

17 The Coalition is not pandering to public
18 emotion or impulses. The Coalition has brought forward
19 responsible approaches to the difficult task of timber
20 management.

21 If the Coalition was simply interested in
22 grinding timber management to a halt, it would have
23 endorsed the proposal by the Ministry of the
24 Environment to require a thorough evaluation of
25 alternate harvesting operations, but this is not the

1 object of the Coalition.

2 The Coalition has carefully examined the
3 extreme positions being taken by various parties,
4 including the Proponent, and on this basis and this
5 example the Coalition submits the Proponent is taking
6 another extreme position and that is the fundamental
7 question of the need to harvest in all forest
8 management units is a fait accompli once approval for
9 this class environmental assessment is granted.

10 The Coalition has considered the
11 proposals by the Proponent. The Coalition has
12 considered the proposals by the Ministry of the
13 Environment.

14 The Coalition has come forward with what
15 I submit to you is a reasonable compromise between
16 these parties. The Coalition has attempted to put in
17 place a way to value alternative timber management
18 activities in a way that is going to work, a way that
19 is consistent with environmental planning principles
20 and in a way that will empower the people with the
21 knowledge they need to exercise their will.

22 The Coalition has carefully examined its
23 terms and conditions and looked at their potential
24 implications for the provincial government, the forest
25 industry, the economy of northern communities and

1 perhaps above all else, the health of our forest
2 environment.

3 On the basis of these considerations it
4 has strived to recommend to this Board reasonable and
5 practical approaches that will provide to the public
6 the information it needs to make reasoned choices in
7 the most practical and affordable manner possible and
8 which will ensure wise conservation of the environment.

9 I would like to touch briefly on the
10 underlying principles that the Coalition has used --
11 excuse me. I would like to deal briefly with the
12 underlying raison d'etre for the Coalition.

13 As you know, the Coalition has formed
14 over the course of this hearing, and I suggest to you
15 that the formation of the Coalition is perhaps one of
16 the most positive events that has occurred throughout
17 the course of this hearing.

18 The two partners in the Coalition, the
19 Ontario Federation of Anglers & Hunters and Northern
20 Ontario Tourist Outfitters Association, have in the
21 past often been portrayed as deadly enemies. Any one
22 who is familiar with the north knows that the battles
23 have gone on.

24 Indeed, the first satellite hearing that
25 you held gave evidence to some of the past battles when

1 Mr. Wilmering and the current president of NOTOA
2 decided to have a little duet on whether the public
3 should have access to forests and what the remote
4 tourism roles should be, and I would say to you that's
5 not an unusual occurrence.

6 There have been battles in the past, but
7 despite these past differences, despite these battle
8 scars, the two organizations have come together. They
9 have realized that while they may disagree in specific
10 circumstances on specific allocation decisions, the
11 fundamental principles on which both organizations are
12 founded are identical.

13 The members of the Coalition support the
14 wise conservation of our environment through informed
15 and rationale planning and management in which the
16 public can take an active role.

17 The recognition that an effective timber
18 management planning process was a source of much
19 unnecessary controversy among members of the Coalition
20 and that an effective process was vital to achieving
21 their mutual goal drew the parties together. The
22 hardships that the Coalition has endured throughout
23 this hearing was cemented that union.

24 You might ask: Will there be a Coalition
25 in the future? I submit to you the Coalition is a

1 permanent fixture. This Board's decision will just be
2 the start of a new future and a new way of doing
3 business together.

4 The members of the Coalition have become
5 well educated and well informed through this long and
6 drawn-out process. This knowledge and awareness will
7 not fade away. Members of the Coalition now understand
8 many of the intricacies of timber management planning
9 that they never understood before. The members of the
10 Coalition now understand the choices that are available
11 and are not being provided. The members of the
12 Coalition now know the questions to ask and, rest
13 assured, the difficult questions will be asked.

14 This Board has the opportunity to
15 prescribe a planning process which will respond to
16 these questions in an intelligent and meaningful way.

17 More and more people will be asking the
18 types of questions that you have heard through these
19 hearings; what are the implications of this timber
20 management plan for marten habitat populations over the
21 next 20 years, over the next 40 years, over the next 80
22 years.

23 Timber management planners had better be
24 prepared to explain the impacts of proposals in simple
25 and relative terms to the public. The Coalition

1 submits that these are reasonable and valid questions.
2 The Coalition submits that these are vital questions.
3 The Coalition submits that these questions must be
4 answered if the public is to trust and have confidence
5 in this process.

6 No longer will it be adequate to explain
7 the need for a road through a prime remote tourism area
8 on the basis that we need the wood. The members of the
9 Coalition will be asking: At what price? What are the
10 socio-economic impacts on the tourism industry? What
11 is the availability and socio-economic impacts of
12 alternate wood supplies from adjacent forest management
13 units?

14 These questions will not go away with
15 good statements that: Well, we have applied the
16 guidelines. As the public continues to become more
17 informed and sophisticated, the questions will become
18 more pointed, more frequent, more penetrating. The
19 public will become more persistent.

20 The days are gone of timber management
21 planners being little Cesars of the forest. Timber
22 management planners need to acknowledge their true
23 constituency - the citizens of Ontario.

24 The Coalition submits that its proposal
25 for timber management planning are the bare minimum

1 required to satisfy the public's desire to regain
2 control of the destiny of their forest.

3 The public will not be be satisfied by
4 worn out bruises such as: We are studying the problem,
5 wait until the next plan, it is not the manual. The
6 public submits that it is the onus of the Proponent to
7 answer these legitimate questions.

8 The Coalition submits that it is the
9 legal right of members of the public under the
10 Environmental Assessment Act to have these questions
11 answered. The only question is: Will it be through a
12 prescribed timber management planning process under a
13 class environmental assessment or will it be through
14 individual environmental assessments.

15 I would like to briefly review for you
16 the basic philosophy of the Coalition's case. The
17 Coalition has build its case on a number of key
18 cornerstones.

19 The Coalition sees this hearing as an
20 investigation into the appropriate application of the
21 Environmental Assessment Act and the fundamental
22 environmental planning principles as applied to the
23 activity of timber management.

24 In developing its position, the Coalition
25 has taken careful note and consideration of experienced

1 and knowledgeable and highly intelligent forest
2 managers like Dean Baskerville and Dr. Jack Ward
3 Thomas.

4 The Coalition has attempted to carefully
5 meld the statutory requirements of the Environmental
6 Assessment Act, the procedures and processes of
7 environmental assessment, the basic elements of modern
8 resource management to design a timber management
9 planning process that is scientifically sound,
10 practical, effective, proven, affordable and legal.

11 There are a number of common threads that
12 run consistently throughout the various proposals
13 advanced by the Coalition, and I will review some of
14 those for you now.

15 The first is, as you heard from Dr.
16 Thomas, you heard it from Mr. Patch, you heard it from
17 Dean Baskerville, make the best use of available
18 information. The Coalition submits that we know much
19 more than we acknowledge and that often much of what we
20 do know is not effectively used.

21 To cope with the complexity and magnitude
22 of the challenge of designing and implementing and
23 evaluating timber management activities, the Coalition
24 submits that we must make the fullest and best use of
25 available knowledge to guide our actions now and in the

1 future.

2 The Coalition agrees with the submissions
3 by the Proponent and the OFIA that effective timber
4 management planning requires sufficient flexibility.
5 Timber management planners must be able to deal
6 effectively with local situations.

7 These decisions, however, require
8 adequate and appropriate provincial direction and
9 sufficient guidance through the nature and contents of
10 timber management plans to ensure a consistent context
11 and application and to ensure that the public has an
12 opportunity to have a window in and an influence on
13 those decisions.

14 The critical issue is one of balance and
15 specificity. The Coalition has, to the greatest extent
16 possible, provided flexibility where possible to
17 accommodate the immense complexity of the area of the
18 undertaking.

19 The Coalition submits that the only way
20 to effectively cope with the complexity and scale of
21 timber management activities within the area of the
22 undertaking is to learn by doing; not by studying, by
23 doing.

24 The Coalition submits that to learn we
25 must explicitly said state what we expect to happen;

1 secondly, the reasons we expect a set of result; and
2 thirdly, we must determine when we are wrong by
3 monitoring our activities.

4 This process has been coined adaptive
5 management and was endorsed by Dean Baskerville, Dr.
6 Thomas and many other Coalition witnesses.

7 The Coalition submits that the level of
8 data and analysis and evaluation should be commensurate
9 with, one, the scope of the problem being addressed;
10 two, the time horizon over which the analysis is taking
11 place; three, the significance of the impacts; four,
12 the detail of the decision being made; and five, the
13 difficulty in choosing among alternatives. Because of
14 the variability in specific circumstance in the area of
15 the undertaking, by and large the Coalition has not
16 specified minimum levels of data, analysis or
17 evaluation. These decisions have largely been left to
18 the judgment of local planners.

19 The Coalition instead has proposed and
20 will propose over the next two days principles that
21 should be used to make these local judgments.

22 The Coalition submits that the complexity
23 and immensity of timber management planning is a
24 fertile ground for the infection and spread of planning
25 paralysis.

1 The Coalition submits that it is not
2 adequate to defer decisions and issues for further
3 study and hope that the difficult and uncertain
4 problems proposed by timber management will go away.

5 The Coalition has adopted the advice of
6 Dean Baskerville and Dr. Jack Ward Thomas and many
7 others that we must embrace our errors, not turn a
8 blind eye to them. We must not be paralyzed by
9 uncertainty, instead we must move forward in the face
10 of uncertainty. We must recognize the uncertainty and
11 decide how best to manage it.

12 Finally, the Coalition embraces the
13 concept of creative management that is characterized by
14 management by objective.

15 The Coalition rejects the use of cookbook
16 planning characterized by constraint management. The
17 application of rigid guidelines like those proposed by
18 the Ministry of the Environment with further
19 refinements to the Moose Habitat Guidelines will not
20 resolve problems, but only exacerbate existing
21 problems.

22 To cope with the uncertainty and the
23 complexity of timber management impacts timber
24 management must be predictable. It must be responsive
25 to local conditions, otherwise, as submitted by the

1 OFIA and supported by the Coalition, the exception will
2 become the rule and planning will become ineffective
3 and aimless.

4 The Coalition submits that these general
5 principles are based on the evidence of the most
6 pre-eminent witnesses conceivable in the field of
7 timber management planning.

8 The Board has heard extensively from Dean
9 Baskerville of the limitations with constraint
10 management, the need for adaptive management, the need
11 for flexibility to encourage intellectual planning, the
12 need to make the best use of available information and
13 the need to embrace uncertainty and learn by our
14 errors.

15 You have heard much the same from Dr.
16 Thomas. He said to you that we know much more than we
17 give ourselves credit for, that management by objective
18 is the only way, the only way to ensure protection of
19 the environmental values of the forest.

20 Dr. Thomas has come to you with direct
21 personal experience of the urgency for change and he
22 has told you of the immense cost of not taking that
23 action now.

24 The Coalition has given careful and close
25 heed to the advice of these pre-eminent experts and has

1 proposed to the Board a timber management process that
2 effectively and affordably incorporated their advice
3 and is consistent with the Environmental Assessment
4 Act.

5 I would like to just touch on a few
6 specifics of the Coalition's position that we will be
7 dealing with in the oral argument over the next two
8 days.

9 I would like to deal first with the
10 position of the Coalition with respect to the
11 application.

12 The Coalition at the outset of this
13 hearing was in opposition to the application by the
14 Proponent. The Coalition wishes to notify the Board
15 that it is now in support of the application and
16 recommends to the Board that it accept the class
17 environmental assess and approve the class of timber
18 management undertakings subject to the Coalition's
19 interpretation of the approval and the terms and
20 conditions set out in the Coalition's written oral
21 argument, in particular in Volume 3 of the Coalition's
22 written argument.

23 As you no doubt have seen, the Coalition
24 has made a number of revisions to its draft terms and
25 conditions and the Coalition wishes to draw to the

1 Board's attention a number of changes that have been
2 made. Many of these changes were made as a result of
3 agreement received during the negotiation sessions.

4 The Coalition has modified its terms and
5 conditions to coincide with the format of all the
6 parties terms and conditions contained in the Illing
7 Report. As agreed in these negotiations, a number of
8 terms and conditions proposed by the Coalition did not
9 fit the format of the terms and conditions proposed by
10 the Proponent and these terms and conditions are now
11 included as Schedule B in Volume 3 of the Coalition's
12 written argument.

13 The Board will note that a number of
14 major categories of terms and conditions have either
15 been deleted or changed materially, and I will be
16 providing to you a list of those changes.

17 We have prepared for you, Madam Chair,
18 Mr. Martel, a summary of the oral argument that we will
19 be presenting and attached to that is a number of
20 items, one of which is a list of terms and conditions
21 that were contained in Exhibit 1637 which, you will
22 recall, was the last drafted terms and conditions
23 received from the Coalition, and we have indicate to
24 you in that list those terms and conditions that have
25 been deleted or changed materially. You will find that

1 on page 17 of the package, Madam Chair. The headings
2 are the headings from the Coalition's terms and
3 conditions that you will find in the table of contents
4 of Exhibit 1637.

5 These changes have been made for a
6 variety of reasons, including inadequate resources to
7 prepare supporting argument, a legal review which
8 identified terms and conditions outside of the Board's
9 jurisdiction, a refocusing of the terms and conditions
10 in accordance with the Environmental Assessment Act and
11 environmental planning principles.

12 I would bring to your attention one
13 change in particular and that is a move from requiring
14 non-timber objectives in timber management plans to the
15 requirement that timber management plans contain a
16 comprehensive net effects analysis for significant
17 elements of the social, economic, natural and physical
18 environment. This matter will be discussed further in
19 oral argument.

20 Madam Chair, for the remainder of this
21 oral argument Mr. O'Leary and I will be sharing roles.
22 As you know, Mr. O'Leary led the Coalition's case
23 during its evidence.

24 Mr. O'Leary has provided to the Coalition
25 his expert legal advice and that of our colleagues at

1 Cassels, Brock and Blackwell regarding the application
2 and interpretation of the Environmental Assessment Act
3 in regard to this application.

4 My role in the remainder of this oral
5 argument is assist the Board in interpreting the
6 evidence they have heard and its relationship to the
7 proposed terms and conditions of the Coalition.

8 Over the two next two days it is our
9 intention to describe the legal basis and the practical
10 and logical basis for the Coalition's proposed
11 modification to the timber management planning process
12 this Board will prescribe through its decision.

13 The summary of the oral argument has been
14 submitted to you. I would like to just take a moment
15 and I will briefly just touch on the schedule for the
16 next two days.

17 We are basically going to deal first with
18 the various aspects of the environmental assessment as
19 it relates to the Environmental Assessment Act, and
20 this goes down to item No. 6 on the list. We will then
21 be dealing with a number of matters that relate to
22 terrestrial ecological impacts, and that's items 7
23 through to 9.

24 Item 10, 11 will deal with the planning
25 process itself and the actual contents of timber

1 management plans; and item 12, we will be going through
2 a number of specific items that are set out in the
3 terms and conditions and reviewing those with the
4 Board.

5 I would now like to ask Mr. O'Leary to
6 address the first set of topics dealing with the
7 interpretation and application of the Environmental
8 Assessment Act, class environmental assessments in
9 general and this class environmental assessment for
10 timber management specifically.

11 As I turn this over to Mr. O'Leary, Madam
12 Chair, it is appropriate perhaps that I should raise
13 this now and that is, I look forward to, and I know Mr.
14 O'Leary does, have an informed exchange with the Board.
15 We invite the Board and I already did -- I saw Mr.
16 Martel shaking his head there.

17 This is our last opportunity to seek to
18 you. This is our last opportunity to ensure that you
19 understand what our position is. You will decide the
20 merit of that position, but this is our last chance to
21 explain to you what our position is and we invite you
22 to ask and interrupt us at any point to ask for
23 explanation and even enter into debate, if the Board so
24 wishes. We would be prepared to do that, too.

25 Thank you.

1 MR. O'LEARY: Madam Chair, Mr. Martel, I
2 would also like to express my personal gratitude for
3 granting me this opportunity to address you and I also
4 share Mr. Hanna's sentiment that we invite any
5 questions which you may have and together we hope to be
6 able to respond to your questions and indicate to you
7 exactly what the Coalition's case is.

8 I have been asked and charged with the
9 responsibility of reviewing some of the statutory
10 framework for the environmental assessment process that
11 is under consideration here and it is important because
12 it is from that framework that your decision must be
13 based.

14 Now, we can start at the beginning and
15 that is: What is the statutory basis for a class
16 environmental assessment?

17 I don't propose to spent a great deal of
18 time on that because it is a given in this hearing that
19 such a framework exists. There is a statutory basis
20 for class environmental assessments.

21 Section 41 of the act defines a class of
22 undertakings, that has been understood and interpreted
23 in the past as giving rise to a class environmental
24 assessment process.

25 The parties to the hearing are in

1 agreement that the process is available. There are a
2 number of examples of class environmental assessments
3 that have been approved before, none of which of course
4 have been submitted to the rigors of the hearing, but
5 they do exist and there is no legal basis or decision
6 which says a class environmental assessment process is
7 not allowed by law.

8 The first submission, Madam Chair and Mr.
9 Martel, is that Proponent did have the option of
10 deciding whether to proceed in the format of a class
11 environmental assessment or that of a numerous number
12 of individual environmental assessments - 96 to be
13 exact.

14 The important point that needs to be
15 drawn from the Environmental Assessment Act is that
16 there is no distinction made between the requirements
17 incumbent upon an individual environmental assessment
18 proponent and that incumbent upon a proponent in a
19 Class EA.

20 There is no statutory basis for
21 distinguishing the two, and that's important because it
22 says that the rigors of the act must apply in a setting
23 of this hearing as they would apply in an individual
24 environmental assessment.

25 There is no provision which would exempt

1 the Ministry from living up to the requirements of the
2 act as determined by the legal interpretation by the
3 courts and by the past decisions of this Board.

4 In this regard we are in agreement with
5 the Ministry of Natural Resources and the Ministry of
6 the Environment. There is not a statutory distinction
7 between the two.

8 Mr. Hanna referred to, and I should
9 respectfully submit quite correctly, the importance of
10 this decision. From a lawyer's perspective, perhaps I
11 can underscore the importance of your decision.

12 The first is that we should look back and
13 see that this was a matter that was referred to you by
14 the Minister of the Environment. It is the first Class
15 EA that has been referred to a Board for a hearing.
16 That must mean something. That must mean that the
17 Minister of the Environment thought that this is that
18 sort of an undertaking which should undergo a hearing.
19 They may not have thought four years of a hearing, but
20 they recognize that it is that important a matter that
21 it required the rigors of a public hearing.

22 The second is, that because it is the
23 first to come before the Board, the legal community
24 and, it is submitted both, and the public, but the
25 legal community will be looking with anticipation at

1 what you say.

2 Has the Proponent been relieved of any of
3 the duties that are incumbent upon it under the act?
4 Is the Class EA process the one that a proponent should
5 follow in the future to try and avoid some of the
6 rigors of the act? Is it that much easier to slip one
7 by?

8 The important point is that the tone of
9 your decision, the particulars of your decision, the
10 direction you set will -- yes, Mr. Martel.

11 MR. MARTEL: That's the nub of the issue
12 though; isn't it? Is the rigor met at the class
13 assessment itself, the major hearing before us.

14 I think you used the term 'can you avoid
15 some of the rigors', and I presume you are talking
16 about once one starts to deal with the individual
17 activities of the four activities, and the question I
18 put I believe about a week ago - time flies by when you
19 are having so much fun - but what would be the value or
20 why have a class assessment if once you have achieved
21 the purpose or if you have got an approval for the
22 class you had to go through the same rigor on the
23 individual activities? What would be the value a class
24 assessment then?

25 O'LEARY: Mr. Martel, I have every

1 intention of addressing that in detail.

2 I should say at the outset that there are
3 a number of benefits to the Proponent and the public by
4 proceeding first through the a Class EA and then still
5 requiring the rigors of the act to be met later on, not
6 least of which is the fact that the Proponent now knows
7 what the planning process they must use in the
8 development, in this case the timber management plan at
9 the project level, must meet.

10 That takes a great deal of effort by a
11 proponent in an individual EA setting. That takes a
12 great deal of time when the Ministry then must sit down
13 and review it before the Minister reviews it and the
14 decision is made as to whether or not there is a
15 hearing. There is a savings of a substantial amount of
16 the time and money in that regard.

17 MR. MARTEL: Let me stop you there, then,
18 because you invited involvement.

19 Maybe you can explain to me, if you have
20 to go through the same process each time, as you did
21 here, and yet we didn't deal with any specific site,
22 these were all dealt with generically, what is the
23 saving?

24 If you have to go through the same maze
25 each time as the major hearing, what are the savings

1 then both in time and money?

2 O'LEARY: Mr. Martel, the question, as I
3 have interpreted it, is: What is the point of having a
4 class environmental assessment.

5 Well, there are a number of reasons.
6 There are some that you can look at from a generic
7 point of view that I referred to and there are several
8 that are specific to this hearing.

9 The first is from the academic side
10 before we got into this setting. The class
11 environmental assessment was assumed as an expeditious
12 means or process whereby a proponent could avoid
13 duplication and the repetitious consideration of a
14 number of common characteristics of the environmental
15 assessment process. I referred to the environmental
16 planning process that requires the Environmental
17 Assessment Act.

18 In an individual EA that has to be
19 considered. If you approve a planning process here
20 that complies with the Environmental Assessment Act,
21 which sets a minimum level of environmental planning in
22 the future, there is no need to go back and review that
23 again. You won't have that fight to live through
24 again. It won't happen across 96 FMUs in most cases.

25 MR. MARTEL: Give me a for example.

1 O'LEARY: For example, if a timber
2 management plan is prepared in accordance with the
3 terms and conditions as suggested by the Coalition, it
4 is submitted that it will have met the rigors of the
5 Environmental Assessment Act, and subject to someone
6 approving to the satisfaction of the Minister of the
7 Environment that there are unforeseen environmental
8 impacts which exceed the ability of that minimum
9 planning level to deal with, there will not be the
10 bump-up, there will not be a government review, it will
11 not be necessary for the proponent to prepare a formal
12 environmental assessment document. That would have
13 been done.

14 MR. HANNA: Mr. Martel, let me take a run
15 at it from a real pragmatic point of view. Let's
16 forget about the law and all that stuff. Let's just
17 talk about -- you and I are timber management planners,
18 we are on a planning team. There has never been a
19 class environmental assessment. We haven't had to
20 worry about four and a half years of all peoples lives
21 and gray hairs and all the rest that has gone with it.

22 We are sitting in a room and we are
23 deciding, we have to got to prepare a timber management
24 plan. There are people out there that say that the
25 Environmental Assessment Act -- they are going to take

1 the stick of the Environmental Assessment Act and hit
2 us with it if we don't do it right. That's the
3 situation we are in.

4 We say: Okay, fine, let's look at the
5 act, that Section 5(3), and we have got the guidelines
6 and all the other paraphernalia that goes with it. You
7 and I sit there and we say: Well, let's see, should we
8 look at alternate wood supply levels or not? Geez, do
9 we have to look at export and import? Do we have to
10 look at recycling? Do we have to look at marten? Do
11 we have to look at watershed impacts?

12 Each one of those decisions we have to
13 make and we have to make those decisions and say, we
14 have to second guess the public and we have to second
15 guess people like yourselves and whether or not they
16 are going to say those were reasonable decisions.

17 You and I are going to sit there and we
18 are going to stew because we don't know and we are
19 going to be very uncertain about whether or not our
20 judgments are going to be deemed acceptable by those
21 people. Not our judgments about whether we have
22 mitigated or enhanced enough or whether the impacts are
23 acceptable, but the judgments about: Have we done a
24 reasonable planning job?

25 That's the two parts of the decision that

1 a Board, such as yourselves, have to make. We have to
2 decide the acceptability of the environmental
3 assessment and then you have to decide the
4 acceptability of the impacts.

5 MR. MARTEL: Now, if I could then, what
6 worries me is that I heard you say, I think it was
7 during your opening comments, I am trying to be
8 specific -- let's put it this way.

9 We have had people at this hearing who
10 have said you have got to go back to square one all the
11 time, you have got to start with the null alternative,
12 whether you will even proceed, or you will go back to
13 the null alternative with respect to access. Those are
14 really gut issues.

15 It is as though if one didn't consider
16 null because, of course, that is what MNR is asking for
17 at the main hearing, you wouldn't look after and ensure
18 that things are done environmentally sound if you
19 didn't do that step.

20 That's what I am trying to find out if
21 that is what Mr. O'Leary means as well, that you could
22 make it less rigorous.

23 Less rigorous, does that mean you have to
24 go back because surely no matter what decision you make
25 the onus is on MNR from here on in to protect the

1 environment, whether you consider because you have got
2 approval under the Class EA, that doesn't exclude the
3 Ministry from making sure that the moose are looked
4 after and the streams are adequately looked after for
5 access and so on.

6 It seems to me that we are being asked to
7 really go back to square one every time. If you start
8 from there, do we even need to have to have access
9 because access leads you to fiber and you can't get
10 fiber without access. We didn't fly it out like B.C.

11 So those two things, and those are the
12 ones we have heard most in the last little while,
13 access and whether you should in fact even consider
14 whether you need the fiber because if one accepts MNR's
15 position, that was determined by the purpose and by the
16 DLUGs and so on.

17 So that, in fact, you can't exclude the
18 environment even if you don't look at the access
19 question. It is as though -- the null alternative for
20 access, because surely that doesn't follow after four
21 and a half years of hearing that if you don't consider
22 the null alternative each time one can ignore all of
23 the other factors pertaining to the environment.

24 I mean, that's where I am having
25 difficulty, that step, that automatically if you don't

1 consider null you are not caring for the environment or
2 if you don't consider that the DLUGs granted fiber,
3 that if you take fiber you automatically ignore
4 everything else.

5 To me that's not logical, and maybe I am
6 not seeing it in the same way others are, but I can't
7 see how you can bypass all of that just because you
8 don't look at the null. So that's what I am trying to
9 say.

10 MR. HANNA: I understand. We have got
11 this very structured way that we are trying to deal
12 with this with the Board, but I prefer to deal with
13 these things up front with you because I think what we
14 say later will perhaps have more impact. So we may
15 cover some of this ground later, but let's see if we
16 can deal with it right now.

17 This is what I will say to you. Let's
18 put us back in the room, you and I, preparing timber
19 management. Now, we are sitting there and we have got
20 DLUGs and we have got approval of the class
21 environmental assessment and now we are going to plan
22 timber management activities.

23 Now, the question we are going to say is:
24 How much wood are we going to cut? How much wood are
25 we going to take off this forest management unit, five

1 years, 20 years, over the next rotation.

2 You have already hit on the nub of it; if
3 I am going to harvest I have got to have access. There
4 is no argument on that.

5 So we are going to sit there and we are
6 going to say: Are we going to -- we also have to
7 realize, as you have said, we have got to protect the
8 environment. We can't escape that, the people say we
9 have got to take care of the environment.

10 Now, we recognize that when we harvest
11 there are environmental impacts, positive and negative.
12 We realize when we access there are environmental
13 impacts, positive and negative.

14 The question is: How much? How much are
15 we going to harvest? Where are we going to put access
16 roads and when we put access roads we have got to
17 realize - and Mr. Bisschop told you in his evidence and
18 we agree with him - that these are highly inter-related
19 activities. So I can't say I am going to harvest but
20 not access. The two go together.

21 So I am going to deal with the question
22 of how much. How do I deal with the question of how
23 much. Do I automatically say: There is a District
24 Land Use Guideline out there that says this is a timber
25 management area, therefore implicit in that is this

1 whole forest management unit is accessed. That's a
2 given.

3 If that's a given, then I can tell you
4 this Coalition wouldn't have come to this hearing.
5 Those are decisions that have to be made on a
6 case-by-case basis, those levels of degree.

7 MR. MARTEL: Can I tell you what my
8 concern is.

9 MR. HANNA: Yes.

10 MR. MARTEL: One looks at that and says:
11 We decided on a unit-by-unit basis, if unit A, Z, Z2
12 and Z5 say: Well, this year we are not managing
13 anything, we are not harvesting anything, how does that
14 affect the overall production requirement of the
15 province because that's decided at a provincial level?

16 MR. HANNA: Let me answer that one. I
17 have to stop you there. Let me say this to you.

18 That question is there no matter what
19 happens in this hearing. The Ministry in its own
20 evidence has come forward and said to you that from
21 year to year - the Industry has said it - that from
22 year to year the demands of the mills in terms wood, in
23 terms of the type of furnish they need, in terms of the
24 types of products they are producing changes and they
25 have to be able to respond to that market.

1 Not only that, but a mill doesn't get its
2 wood from one FMU, very few do. We get them from a
3 series of forest management units.

4 MR. MARTEL: But that is precisely the
5 point, Mr. Hanna. That is precisely the point.

6 You get it from a variety of sources
7 across the area of the undertaking and if, in fact,
8 each area decided what it wanted to produce or what it
9 was going to produce, you tell me how you come up with
10 the final figure which meets the provincial need just
11 for that year. I am not talking about any other year.

12 If each area says: Well, if you have got
13 five guys who had a lot of pressure put on them by
14 whatever, for whatever reason, and five of them decide
15 that we are not going to do any fiber this year, it is
16 too hot out there, we will do some other things, how do
17 you --

18 MR. HANNA: Well, let me --

19 MR. MARTEL: Don't you start and say:
20 Well, here is the amount of fiber we need?

21 I can't get the logic of how you bring it
22 all together to ensure, if each unit decides what it is
23 going to produce, that the requirements for the area of
24 the undertaking are met, if each area decides its own
25 amount of fiber.

1 MR. HANNA: Let me say to you, Mr.
2 Martel, that is what happens today. That is de facto
3 what happens.

4 These timber management planning manuals,
5 the terms of reference of the Proponent themselves say
6 that the timber management objectives will be developed
7 in the plan. These objective are developed in the
8 plan.

9 Now the difficulty --

10 MR. MARTEL: But you admit yourself, Mr.
11 Hanna, at this stage they decide what they are going to
12 produce. They do not say: Well, we are not going to
13 produce. They do in fact produce unit by unit.

14 MR. HANNA: They do something.

15 MR. MARTEL: Something. Whatever the
16 something is, towards a provincial goal; is is not the
17 case?

18 MR. HANNA: Mr. Martel, you and I know
19 that if we were having a beer out of this place we
20 would have no problem agreeing to: There aren't going
21 to be very many forest management units in this
22 province, that we are to say the null alternative is
23 going to be a viable alternative. That's not really a
24 question, but that isn't necessarily the test, whether
25 the null alternative is useful. That is not the

1 appropriate test.

2 This is the important issue, is that the
3 null alternative -- now, the null alternative may not
4 be, and this is what I will be saying to the Board and
5 it is in our written argument, may not be: Close down
6 the whole show because, as I say, how many times is
7 that one going to wash? That's going to be a cold day
8 in January.

9 What you are going to see, though, is
10 that there will be circumstances where there are
11 different degrees and the different degrees will be in
12 essence a portion of the null alternative. Not the
13 null alternative in an absolute way, but a portion of
14 the null alternative.

15 So, for example, you have an the area, as
16 you heard from Ms. Dube-Vellieux, where you have got an
17 extensive remote tourism industry, very vibrant,
18 valuable portion of that legal economy, that you
19 may say: We aren't going to put timber management
20 activities in there, and in essence that is the null
21 alternative for that area because, as Mr. Bisschop's
22 evidence and the evidence of the Proponent has said to
23 you, because these activities are inter-related you
24 cannot disassociate it, you cannot take that out of the
25 context of the entire unit.

1 So you have to evaluate what social and
2 economic implications of that denial of timber
3 management activities in that area are for a
4 permanently or for a certain period of time in the
5 context of the entire forest management unit.

6 So that, in fact, what you are doing is
7 evaluating a portion of the null alternative at the
8 forest unit level so you have a context in which to
9 evaluate what the implications are to the mills, to the
10 local communities, to the environment.

11 So if the difficulty we are having is the
12 null alternative, the null alternative in its most
13 extreme sense - how should I say - going to be of
14 particular value, I have no problem in agreeing with
15 you and I don't think the Coalition has a problem in
16 agreeing with you, but that is not going to be a winner
17 very often.

18 MR. MARTEL: Isn't that what this
19 planning process is about, that you take an area --
20 just set aside the null alternative for a moment.

21 We are putting a local local citizens
22 committee, we are putting a person on the planning team
23 so that, in fact, from square one with everybody having
24 their input, that MNR and the Industry know they are in
25 a major battle if they are going to just move into an

1 area and say: Regardless of the wishes of the folks,
2 we are going in there to take timber.

3 I mean, it seems to me that that defeats
4 the whole purpose of what we are doing, what we have
5 been talking about for four and a half years, and that
6 there have been moves to includes local citizens
7 committees, somebody from the local citizens committee
8 on the planning team to, in fact, try to highlight much
9 quicker in the game right and up front in fact the
10 areas that would be in contention.

11 I mean, that is really what it is about
12 when you are looking at is, people vying for the same
13 piece of property for different reasons.

14 MR. HANNA: I disagree with you there. I
15 think there is much more at stake than that, but that's
16 a part of it.

17 MR. MARTEL: I am just taking the most
18 basic thing, that in fact if that's not what the
19 planning process is it about, then I am not sure what
20 the purpose of the planning process is.

21 MR. HANNA: Let me deal with that
22 because, again, these are things that we will deal with
23 in a more structured way as we go, but I think it is
24 very important to deal with this now and that is this:

25 I am now on a local citizens committee, I

1 get the nod, I may be something, maybe the death-knell
2 for a lot of people, but I get put on the planning
3 team, I am sitting there around and playing with all
4 these high powered technical guys sitting there having
5 these discussions and the question I want to ask them
6 is: Okay, guys, I realize that there is a local
7 community out there that depends upon their jobs and
8 economic stability for this industry, I realize there
9 is a mill, we have got commitments and whatever, but
10 let's look at the alternatives, let's look at the
11 alternatives at the most most basic level.

12 I don't want to start looking at whether
13 we should put aside -- we shouldn't have timber
14 management over remote tourism yet. I am not ready for
15 that question yet. I want to ask the more fundamental
16 question: How much wood and what kind of forest do we
17 want on this forest management unit.

18 That's the fundamental question. That's
19 the question I want to ask first and foremost and if I
20 don't have the option saying: Well, let's look at some
21 different possibilites here. We can increase the wood
22 supply, we could really go intensive silviculture, we
23 could really crank 'er up. It may have very strong
24 benefits in terms of local communities, there may be
25 all sorts of very positive things associated there,

1 let's look and see what they are. Let's also look at
2 maybe ratcheting it down a few notches and see what the
3 implications are.

4 Those are fundamental questions. Those
5 are fundamental questions in terms of what's going to
6 happen on that forest management unit over time. Once
7 I have started to look at those things, once I have
8 said: Okay, look, the no-gos isn't on guys, we are
9 going to close down Hornepayne, it isn't going to work,
10 then I am going to start saying: Well, let's look at
11 something in between.

12 If we keep 'er going full crank we are
13 going to have Thunder Bay just doing fantastic, but we
14 are going to close down every tourist operator in the
15 unit.

16 What is there in between? What are the
17 options? What are the alternatives we have got to look
18 at?

19 I have to be able to ask those questions
20 to the planning team. I have to be able to say to the
21 planning team: Let's look at those ranges because the
22 planning team says to me: The Environmental Assessment
23 Board, Ms. Koven and Mr. Martel said those aren't on,
24 those aren't things to be considered. They decided
25 that. What am I left with?

1 I am left with saying: Well, what do the
2 guidelines say in terms of a buffer? You get 200
3 metres around a lodge. Well, don't you think we can
4 make it 210 and make this one an exception. That is
5 what I am left with. I am left with trivia. I am not
6 left with dealing with the substance.

7 I say to you, it is the requirement of
8 the Proponent, not me as some part-time timber
9 management planner come tourist operator, to try and
10 predict what the impacts of this activity is going to
11 be on the environment. I want that information
12 provided to me and I have a right to have that provided
13 to me.

14 MR. MARTEL: You don't see that in the
15 planning process as presented?

16 MR. HANNA: If Mr. Freidin wants to tell
17 me right now that that information is going to be
18 provided by the Ministry of Natural Resources I will
19 close up my books and leave.

20 MR. MARTEL: Well, Mr. Freidin...

21 MR. HANNA: Ask him.

22 MR. O'LEARY: Perhaps we can give him the
23 break.

24 MADAM CHAIR: Thank you, Mr. Hanna.

25 Mr. O'Leary, I am ready for the morning

1 break. How about you?

2 O'LEARY: Madam Chair, that would be
3 appropriate.

4 MADAM CHAIR: We will be back in 20
5 minutes.

6 ---Recess at 10:30 a.m.

7 ---On resuming at 10:50 a.m.

8 MADAM CHAIR: Please go ahead, Mr.
9 O'Leary.

10 MR. O'LEARY: Thank you, Madam Chair.

11 If I could just take us back to the point
12 where we left at the break. I believe that Mr. Martel
13 and Mr. Hanna were having a very excellent exchange in
14 respect of the practical side of what I had indicated
15 earlier, but if I could take us back to -- maybe it is
16 not as exciting, but there is a legal side to these
17 requirements.

18 It flows out of the submissions made not
19 only by ourselves, but the Ministry of the Environment
20 and this is not something that we sat down together and
21 said: Well, this is a great way to interpret the act
22 and filed mutual submissions. There couldn't have been
23 any collusion; we were filing separately and we didn't
24 even see each other's arguments, but the position
25 remains that the Class EA process is a two-stage

1 approval process.

2 At the second stage of the project level
3 the Ministry of the Environment takes the same position
4 as the Coalition, and I respectfully submit that is the
5 position that must be taken of the interpretation of
6 the act which states that the requirements of the
7 Environmental Assessment Act must be met at a project
8 level stage.

9 What does that mean? That means you must
10 comply with the purpose of the act and how a party
11 knows that they have complied with the purpose of the
12 act is by looking to see if the requirements of
13 subsection 5(3) have been met.

14 That brings us back to that ugly term,
15 the null alternative, but that is a requirement which
16 has consistently been applied. If not but for one
17 practical question --

18 MR. MARTEL: But they don't have it in
19 their terms and conditions.

20 MR. O'LEARY: MNR does not. They say it
21 is not --

22 MR. MARTEL: No, MOE. If I recall
23 correctly, I don't believe MOE has it in their terms
24 and conditions.

25 O'LEARY: They require a consideration of

1 alternatives to at the project level and that has been
2 interpreted in the past as requiring a consideration of
3 the null alternative.

4 MR. MARTEL: I am just going by memory,
5 but I am not sure if they have a specific term and
6 condition. They talk at some length, but I can't
7 recall how clearly they indicated that --

8 MR. HANNA: Mr. Martel, perhaps I can
9 help you on that.

10 My recollection of Ms. Dahl's evidence
11 was that it is not standard practice to identify the
12 null as a requirement, that is it understood.

13 There is nowhere in the act, for example,
14 that the null ten alternative is spoken. It is
15 understood.

16 I believe Ms. Dahl's evidence, and I can
17 get you the citation if you wish, said that it is not
18 normally specified as an explicit requirement.

19 MR. FREIDIN: I would like the citation
20 for that, please.

21 MR. HANNA: Fine.

22 O'LEARY: Mr. Martel, perhaps we can
23 assist you and perhaps over lunch we can take a look
24 and see if there is anything particular in MOE's
25 written submission that would answer your question.

1 Admittedly, there is nothing in the
2 statutue which says you must consider the null
3 alternative, but the statute has been interpreted as
4 requiring a consideration of a reasonable range of
5 alternatives and that has been considered to include
6 consideration of the null alternative.

7 That doesn't mean that the null
8 alternative will more likely put forward as the
9 practical alternative, but at the very least it has to
10 be used as a benchmark to determine what will the net
11 environmental impacts of the preferred alternative be.

12 How can the Ministry know what the net
13 environmental impacts will be unless they consider the
14 situation in the absence of the preferred alternative.

15 Mr. Martel, you asked whether or not we
16 can rely upon MNR's promises to protect the environment
17 or said that they would be accountable for it,
18 responsible for protecting the environment.

19 It may be that you would feel it
20 appropriate to impose a term and condition which said
21 that the Ministry must protect the environment.

22 It is the Coalition's submission, sir,
23 that it is promises by proponents in the past which
24 they could not live up to which gave rise to the
25 creation of the act in the first place so we know that

1 each proponent would in each case live up to a minimum
2 level of environmental assessment before the project
3 took place.

4 MR. MARTEL: But that wasn't required
5 previously. I mean, let me make sure I phrase this
6 properly for you.

7 The terms and conditions that are going
8 to apply with any approval will not give the Ministry
9 the option as to whether -- I mean, it is not blind
10 faith that someone is going to write or give approval
11 with terms and conditions.

12 If I hear you correctly, you are saying:
13 Well, no one can rely on the Ministry just to believe
14 they are going to do it. The terms and conditions of
15 the approval aren't going to allow the Ministry to
16 think about whether they will look after the
17 environment or not.

18 I mean, many of the conditions that there
19 has been agreement on prevent the Ministry from, in
20 fact, doing that.

21 MR. O'LEARY: Mr. Martel, there is no
22 question that the Ministry has the best of intentions.

23 MR. MARTEL: Not intentions. Is it
24 intentions that these terms and conditions are about or
25 are they, in fact, specifics that they must comply with,

1 otherwise they won't get approval and they can, in
2 fact, could be prosecuted if they don't?

3 O'LEARY: They must comply with the terms
4 and conditions but the question is: Do those terms and
5 conditions meet the legal requirements of the
6 Environmental Assessment Act.

7 Are you satisfied at the end of the day,
8 if you were to impose the Ministry's terms and
9 conditions, that down the road their terms and
10 conditions, without the amendments suggested by the
11 Coalition, that down the road their development of
12 timber management plans will be done in accordance with
13 the Environmental Assessment Act.

14 Madam Chair, Mr. Martel --

15 MR. MARTEL: Well, surely this whole
16 hearing, Mr. O'Leary, and everything we have heard for
17 four and a half years, all part of the information with
18 respect to this hearing, and it isn't a question -- I
19 go back to the fundamental question I started with
20 earlier this morning.

21 With the terms and conditions that are
22 imposed, why does just considering the null, either for
23 access or fiber, throw everything else out?

24 If you don't do those things -- what I am
25 hearing from various parties is, if we don't consider

1 the null and MNR, of course, takes the position that's
2 why they put it up front, why are taking the position:
3 Well, you are throwing the baby out with the bath water
4 if you don't go back to square one for each activity?

5 Certainly if you don't start with null,
6 as I am understanding what you are telling me and maybe
7 I am not understanding it correctly, but once you --
8 let's say, for example, you did accept MNR's position
9 that once you get this approval you have got the
10 approval for fiber, why is everything else throw out?

11 Why does it flow from that that the Crown
12 has taken upon itself to control the flow of timber,
13 fiber? Why does it flows from that if they get that at
14 the first level of planning, why does it flow that
15 everything else is excluded, that automatically the
16 Ministry doesn't have to look after the environment as
17 carefully as they would if one considered the null
18 alternative for fiber or access?

19 That's what this all hinges on. It seems
20 that everything else goes out the window just because
21 one doesn't consider, requested by your party or
22 Forests for Tomorrow or MOE, that what -- you see, I am
23 having difficulty with why you would even have a class
24 EA at all if you go back to square one each and every
25 time for each and every activity. You are back to the

1 drawing board. Why have a class EA?

2 MR. HANNA: Mr. Martel, I would ask the
3 Board: What timber management -- excuse me. What wood
4 supply are you approving? What wood supply has been
5 brought before you for each forest management unit and
6 said: Board, approve this wood supply for each
7 management forest unit.

8 The Proponent hasn't done that. The
9 Proponent instead has come forward and said: The
10 Timber Production Policy we have got stinks. We are
11 rewriting it. So they obviously haven't come forward
12 to you and said: Please approve this policy because we
13 can't rely on the one we have got.

14 So, first of all, they haven't come
15 forward to you and said: This is the wood supply level
16 we want for each forest management unit. They didn't
17 say that. So the question is how are we going to
18 decide that.

19 MR. MARTEL: Maybe, Mr. Hanna, the
20 question is not how, but who is going to decide it.

21 Isn't that the difference of the
22 positions by the various parties, who s going to decide
23 the amount of wood that's going to come off an
24 individual unit.

25 Is it MOE? Is it the local citizens

1 committee? Is it MNR? Is it the forest industry? Is
2 it the Anglers and Hunters?

3 I mean, the question it seems to me, and
4 maybe I am missing it, but I don't think I am, the
5 question is: Who has the right or the
6 responsibility -- not the right, the responsibility to
7 determine how much is going to come off the land and
8 how that will be broken up.

9 Someone has that responsibility and is it
10 the individuals or is it the province itself mandated
11 to the Ministry of Natural Resources to make that
12 determination in a document that some day will be
13 approved by the cabinet of Ontario.

14 MR. HANNA: Let me answer that the best
15 way I can.

16 MR. MARTEL: I think this is the basic
17 issue.

18 MR. HANNA: I don't disagree. That's why
19 I think it is important to have this out right now
20 because all the rest of it is just paraphrenalia. This
21 is the essence of this issue.

22 I am going to come at it - how should I
23 say - from the evidentiary basis and Mr. O'Leary is
24 going to come at it from the legal point of view.

25 Let's deal with the evidentiary basis,

1 first of all. What you have and what the Ministry has
2 come forward and said to you is that you are going to
3 have a timber management planning team with a plan
4 author, he is going to develop a timber management
5 plan. You are going to have a local citizens committee
6 that's going to sit there and review that and provide
7 comments, you are going to have a general public
8 consultation process where you are going to get
9 comments back on that and that's going to go through an
10 internal review approval process that the Ministry has
11 described to you.

12 It then has an issue resolution process
13 if there is something that is still outstanding on that
14 and that goes up through the Ministry, as has been
15 described to you.

16 If you have still got problem, it then
17 gets bump uped potentially or gets a request for a
18 bump-up which goes to the Minister of the Environment.
19 The Minister of the Environment looks at it and says:
20 The problem is here and is this of substantive nature
21 that I will have an individual environmental assessment
22 prepared and if I do, then we will go through that
23 process.

24 Then we will have an environmental
25 process prepared and we will have that reviewed and it

1 may get referred to the minister to have a hearing
2 called, and we may go back to a board, I am sure it
3 won't be this Board, but it would go through the
4 process again and everybody will have their say.

5 When that board has heard that evidence,
6 that decision will go back to the Minister of the
7 Environment, it will go back to cabinet and cabinet
8 will sit there and say: This is what this board has
9 found, this is the provincial interest that we have,
10 that we are vested with the responsibility of what
11 balance are we going to decide on because that's only
12 when the decision is going to be made.

13 Now, where does the authority lie? The
14 authority lies with the executive of government. It
15 always will and it always should.

16 What you are being asked to do is to put
17 into place a system whereby those options can be
18 investigated, whereby those discussions and dialogue
19 can take place and whereby the decision-makers at all
20 levels through the hierarchy can have the benefit of
21 seeing both sides of the matter.

22 But in terms of final determination, the
23 final determination rests with the executive of
24 government. They have the authority, they have the
25 power, but they also are bound by the Environmental

1 Assessment Act and they are bound by the Environmental
2 Assessment Act and the processes set out there in
3 Section 5(3) and the rest of it. The Crown is bound by
4 that.

5 So that they have the responsibility to
6 go through the process, to follow that process and to
7 provide the public with the opportunity to be involved
8 in the process, but the decisions, the final power is
9 no different. The final power will always rest with
10 the executive of government.

11 MR. MARTEL: Okay, Mr. Hanna. We have
12 established that, that the government makes the
13 decision as to the amount through the appropriate
14 ministry that will come off a unit, off an individual
15 unit. Am I following you?

16 MR. HANNA: Yes, ultimately after they
17 have complied with the law.

18 MR. MARTEL: Oh, yes. Nobody is above
19 the law.

20 MR. HANNA: I agree.

21 MR. MARTEL: I'd say something -- no, I
22 won't.

23 So the government is ultimately
24 responsible and it says MNR you decide. Now, in each
25 individual unit, does give the authority -- let me put

1 the question this way. Does that give the authority to
2 the individuals units to determine the amount that will
3 come off their unit year by year?

4 MR. HANNA: No, they propose it and that
5 level has to go up and be ultimately decided if it
6 becomes an issue by the executive of government. You
7 don't want all of those decisions going to the
8 executive of government just because, you know, it will
9 come apart at the seams.

10 MR. MARTEL: Then to have coordination,
11 Mr. Hanna. If the government and the individual units
12 have a certain amount that they must -- I mean, there
13 is a global figure out there. We don't know what it
14 is. I mean, something that was approved in 1972 is
15 history. We have been waiting breathlessly for that
16 new plan since 1989, I guess it is, when MNR --

17 MR. HANNA: Wait for 195.

18 MR. MARTEL: Well, they promised it.

19 Anyway, there is a figure out there and
20 the Crown is responsible for getting that figure for a
21 given year from the provinces.

22 MR. HANNA: Where is the Crown
23 responsible, Mr. Martel? The crown is responsible
24 under the Crown Timber Act for certain things. The
25 Crown is responsible under the Environmental Assessment

1 Act for certain things, but the Crown does not have a
2 legal responsibility that I know of.

3 MR. MARTEL: The Crown has the
4 responsibility to - that is the purpose of this act --
5 a continuous and predictable supply of wood. That
6 means year by year there is a certain amount, whatever
7 the requirements might be out there, the Crown has a
8 responsibility to ensure that amount of fiber for that
9 given year.

10 MR. HANNA: I have to stop you there
11 because I think that may be where you and I differ.
12 You said whatever the requirements might be.

13 MR. MARTEL: Right.

14 MR. HANNA: I say to you no. I say to
15 you no, not whatever the requirements might be.

16 I say to you that the level of wood is
17 the appropriate balance of advantages and disadvantages
18 to the environment of different levels and one of the
19 advantages to the environment will be the forest
20 industry and the economic impacts that come out of the
21 forestry, and one of the disadvantages may be impacts
22 on remote tourism and to decide what the required level
23 is is to look at those advantages and disadvantages.

24 MR. MARTEL: But, Mr. Hanna, you can't
25 look at it in a vacuum, can you?

1 What I am trying to get at is, how one
2 ascertains -- if you have got a hundred different
3 units - 96 I think Mr. O'Leary said this morning,
4 around there - each deciding the amount it will produce
5 for a given year, who is making decision then?

6 It's not the Crown then. You are
7 suggesting, I think, that it is the folks in a given
8 unit based on the conditions in that unit how much in
9 fact will be produced that year.

10 MR. HANNA: Mr. Martel, no, that is not
11 what we are proposing.

12 What we are proposing to you is this, and
13 I will be going through with you the audit because the
14 audit, I will submit to you in my oral argument, is as
15 relevant today as it was when it was written. That's
16 the exhibit that Baskerville introduced.

17 He said in there quite clearly and he
18 spoke quite eloquently, I'm not as eloquent, in terms
19 of the difficulties in the way the timber production
20 policy for this province has been developed and he
21 speaks about the need for a bottom/up top/down approach
22 to developing that policy.

23 The way I interpret Dean Baskerville's
24 advice is this, he is saying you clearly have to have
25 provincial coordination or otherwise you have got chaos

1 and the government could not relief itself of the
2 responsibility that it has as the government of the
3 province.

4 What Dean Baskerville is saying is: Look
5 at the production possibilities - well, we call it
6 production possibilities. I don't care what the word
7 is you use - the alternatives that you have available
8 at the unit level. Use that as your starting point,
9 work up through your process unit by unit and then
10 start combining your units by districts, by regions,
11 whatever process you want to use until you come to a
12 provincial level.

13 At the provincial level you will look and
14 you say: Well, I have got a range of possibilities on
15 this unit, a range of possibilities on that unit and
16 whatever and I will make a policy, a timber production
17 policy for the province.

18 I will say: When I look at it in the
19 fullness of all of the units, when I look at it in a
20 coordinated way this is what I think is best for the
21 province. That's a policy.

22 MR. MARTEL: Annually?

23 MR. HANNA: That may be every five years,
24 whatever the time -- annually just wouldn't be
25 feasible, clearly.

1 That decision is made. Now, the
2 government has the possibility at that point to submit
3 that decision to an environmental assessment. The
4 government could do that or the government has the
5 possibility of saying: We are going to provide that
6 policy through an executive process and we are going to
7 provide that direction down to the different units,
8 right down to the district manager.

9 We are going to say to the district
10 manager: This is the amount of wood that we think is
11 in the best public interest based upon the analysis
12 that we have done. That is going to be a direction
13 that that district manager is going to look at pretty
14 carefully, I would say.

15 The district manager is then going to be
16 faced on a five-year basis with approving timber
17 management plans within his district because that's
18 where the first level of approval comes.

19 He is going to look and he is going to
20 say: What is the provincial policy? What is the
21 regional breakdown of that? What is the district
22 breakdown of that. How does this plan match with the
23 direction the province has given me of what they feel
24 is appropriate?

25 He gets the plan back and the plan, as a

1 result of going through a full evaluation of
2 alternatives and complying with the Environmental
3 Assessment Act and the planning process that you will
4 prescribe, comes back with a plan that's less than what
5 he thinks the province has told him is appropriate.
6 The district manager has to take make a choice.

7 The district manager has to make a choice
8 and say: Under the facts that I have before me and I
9 have seen that this detailed planning process has been
10 carried out, is it reasonable for me to differ with the
11 provincial policy. He has to make that decision.

12 If he makes that decision there may be
13 need in the administrative structure for him to provide
14 some rationalization of that to his superiors.

15 He makes that decision and if he decides
16 the plan isn't good enough he puts it back into the
17 works and says: Do it again, guys. It ain't good
18 enough.

19 If the plan is acceptable, he passes it
20 on. He puts it up through the process that you have
21 heard and ultimately that goes back up to the highest
22 levels of government, the timber production branch - I
23 am not sure what the name of it is - that branch looks
24 at it, the director looks at it and he then obviously
25 is going to report to the Assistant Deputy Minister and

1 the Deputy Minister and all the way to the Minister.

2 The decision is made: Can we allow this deviation from
3 the provincial objective from what we as an executive
4 government have decided is appropriate for the
5 province.

6 They may come back down and say: No, we
7 can't live with it and that may be that they say: Go
8 back to the drawing board, boys, and try it again.

9 Now, if they do that and that process
10 continues until they get what - they being the
11 executive government - get what they want from that
12 forest management unit. They are faced with a legal
13 requirement. They are faced with the Environmental
14 Assessment Act and there is the option for the public
15 to say: We don't agree with your decision. We don't
16 think that this is in the public interest and this act
17 gives us the opportunity to ask those questions.

18 At that point it could all be thrown open
19 again. We could start all over again. It could go
20 through the process I have described, it could come
21 back to the Board.

22 All that is doing is simply asking the
23 executive of government to review their decision
24 because, as you know, it goes right back to the
25 executive again, right back into their lap. The

1 control is still the same. It is simply a matter of
2 how carefully you have to review that decision.

3 I would say to you, one way, if the
4 government -- I don't think it is very practical, but
5 one way that possibly you could settle the whole issue
6 would be to take the timber production policy and
7 submit it to environmental assessment. That's one I
8 won't be around for because my family won't take it,
9 but that's a way to deal with it.

10 It hasn't been dealt with and this Board
11 hasn't been asked to make that determination, as far as
12 I know. What you have been asked to do is say: Put in
13 place a planning process that will recognize those
14 policies are out there and that that can be brought
15 into the process in an orderly way so those decisions
16 can be made, but not that that policy becomes
17 pre-emptive, not that that policy becomes legally
18 binding on these planners at a forest management unit
19 level.

20 It would only be binding if this Board
21 decided this is the level of timber management, the
22 level of wood supply that you shall produce off that
23 forest management unit. That is a legally binding term
24 and condition, but the policy is not legally binding.

25 O'LEARY: I can take that one step

1 further from a legal analysis and say that the policy
2 cannot be legally binding because the act states right
3 in Section 4 that it binds the Crown and that
4 paramountcy has to be given as a result of that for the
5 purpose of the act, which I am sure has been set out a
6 number of times in argument to this point, but that is
7 the betterment of the people of Ontario through the
8 protection, conservation and wise management of the
9 environment, and the only way we know that that has
10 been achieved is by prescribing a minimum level of
11 environmental assessment.

12 It is the Coalition's position that the
13 most effective and practical level to do that at is the
14 project level.

15 MR. HANNA: Mr. Martel, I just want to
16 make sure that you understand, when we say the project
17 level we are not talking about the activity level.
18 There is a difference between activity and project. I
19 just want to make sure you understand that. That's a
20 very important distinction.

21 The project level we are talking about, a
22 timber management plan, a forest management unit.

23 We support the submissions by the
24 Proponent that it is because of the unique
25 characteristics of timber management, a quagmire, once

1 you start getting down at the activity level trying to
2 deal with many of the elements of the Environmental
3 Assessment Act and that's why we are not in support of
4 what the Ministry of the Environment is proposing
5 because we can see what that leads to. The Proponent
6 has already spoken to you about the difficulties and we
7 support that.

8 So that the issue is at the planning
9 level, which we are submitting should be the forest
10 management unit level, is where that Section 5(3) has
11 to really come into play. That's a very important
12 distinction.

13 MR. O'LEARY: Madam Chair, Mr. Martel, if
14 I may move on, the next heading under the group of
15 matters that I will be addressing is Acceptability of
16 Environmental Assessment. To boil it down into one
17 important area is the question of, the evidentiary
18 burden is on the Proponent to satisfy you that the
19 environmental assessment should be accepted.

20 I mentioned earlier that there is no
21 distinction in the act between the class environmental
22 assessment and an individual environmental assessment.

23 That has implications in terms of the
24 burden that the Proponent must meet. It means that
25 they must meet the same onus, same tests and

1 requirements in this class environmental assessment
2 that would be required of them in an individual
3 environmental assessment.

4 That does not mean in a class
5 environmental assessment that it would be desirable or
6 even possible to consider the net environmental impacts
7 of timber management in each of the individual FMUs.

8 If we had attempted in this hearing, if
9 MNR had attempted in this hearing to introduce
10 site-specific evidence about what each their plans or
11 draft plans, when they get around to doing it, will
12 have in terms of net environmental impact, this hearing
13 would have just started.

14 The evidentiary burden in such a
15 situation would be that the Proponent would have to
16 introduce specific evidence about the net environmental
17 impacts in each and every one of the FMUs, but this is
18 a class environmental assessment.

19 As pointed out by the Ministry of the
20 Environment in their argument, these matters are dealt
21 with at a more generic or general level and it is at
22 that level that you must look at the evidence and
23 determine whether or not the Proponent has satisfied
24 you that the environmental assessment should be
25 accepted and the purpose of the undertaking fulfilled.

1 We concur with the written argument of
2 the Ministry of the Environment that we must look at
3 the level, generic level, general level, to determine
4 if the Proponent has met the requirements of the
5 Environmental Assessment Act. It makes no sense to
6 require a Proponent in a Class EA setting to try and
7 seek approval for the next stage of the process.

8 This is important, Madam Chair, Mr.
9 Martel. This is an important point because the
10 Coalition submits that if you approve MNR's terms and
11 conditions without the amendments suggested by
12 Coalition you would have, in effect, said that MNR has
13 adduced sufficient evidence in this hearing to make a
14 finding that the timber management plans that will be
15 developed in the future will all have been done in
16 accordance with 5(3) of the act.

17 It is submitted that the evidence that
18 has been lead of a general or generic nature does not
19 support such a finding. That is why it is necessary to
20 put into place a planning process which meets those
21 requirements. It recognizes that when MNR came to
22 receive, what they are asking for or should be asking
23 for is a planning process which complies with the act.

24 Now, the second decision the Board must
25 make - after it decides, first of all, determining the

1 acceptability of the environmental assessment - is
2 whether or not to approve the undertaking and, if so,
3 with what terms and conditions.

4 As indicated, I am certain by other
5 parties, the Board has wide discretion and jurisdiction
6 to impose those terms and conditions it believes are
7 necessary to fulfill the purpose of the act and to
8 ensure that the requirements of the act are met.

9 The difference between the terms and
10 conditions that we are respectfully submitting you
11 should impose or must impose here and that which you
12 would impose in an individual EA is that in the latter,
13 in the individual setting, those terms and conditions
14 would relate to site-specific matters. They would deal
15 with the construction activity of a particular project.

16 Here your terms and conditions will set
17 out a planning process that the Proponent must follow
18 and unless that planning process meets the requirements
19 of the act, because we do not have the timber
20 management plans in evidence before us, in part because
21 they haven't even been drafted, how can we know, unless
22 the terms and conditions comply with 5(3) which tells
23 us that the purpose of the act has been met, how can we
24 know that those plans live up to the noble purpose of
25 the Environmental Assessment Act.

1 It is submitted that what the Proponent
2 is seeking to do, getting back to my earlier comment,
3 is to avoid some of the rigors of the act by excluding
4 in its terms and conditions a requirement to consider a
5 reasonable range of alternatives.

6 I know we get stuck on the null, but it
7 is submitted that what has to be done under the act is
8 consider a reasonable range of the alternatives, make a
9 prediction of the net environmental impacts that are
10 associated with each one of those alternatives and then
11 select the best alternative.

12 Mr. Martel, Madam Chair, in responding to
13 your question earlier I addressed several of the areas
14 where I think the class environmental assessment
15 process has assisted us in terms of moving us ahead.

16 Now moving on to the next area which I
17 refer to in our summary as the rationale for class
18 environmental assessment, I would like to touch on a
19 couple of other areas that I think are of significance
20 and which will tell the people of Ontario that the four
21 and a half years that have been spent here have been
22 worth a great deal of thought and the benefit that
23 flows to them is immeasurably greater than that which
24 would have flowed from the Proponent seeking individual
25 FMU approvals.

1 One benefit that the public will realize
2 is the fact that there will be one planning process
3 which will be implemented across the area of the
4 undertaking in each of the FMUs. That will provide for
5 a consistency of application. People in one part of
6 the province will get to know and expect that it will
7 be a consistent application of the planning process.
8 Continuity and consistency it are the hallmarks of
9 fairness and respectability.

10 Further, as noted by the Ministry of the
11 Environment at page 34 of its argument, a common
12 planning process will produce data on specific matters
13 in comparable formats which can be systematically
14 assessed to determine progress across the area of the
15 undertaking. So we have got apples talking with
16 apples.

17 The Coalition would step take that
18 submission one step further and say that by providing
19 for the compatibility of information formats that that
20 would provide for the efficient and effective transfer
21 of information and knowledge between the different FMUs
22 and different forest management planners in each of the
23 particular FMUs.

24 The second important benefit of this
25 hearing is the fact that this is one that has included

1 the people of Ontario. Four and a half years is a long
2 time, admittedly, for any hearing, but considering the
3 area of the undertaking, the number of FMUs, the people
4 having an interest in stepping forward and speaking
5 their minds, you have accommodated them by providing
6 satellite hearings and by allowing them to step
7 forward. That is very important to the respect and the
8 integrity of the environmental assessment process.

9 The third benefit that flows from this
10 hearing is that the Proponent, who has been involved
11 since the beginning and has presumably received,
12 considered and analysed all of the evidence that has
13 been put forward, has heard about other ideas and other
14 methodologies. It is submitted that it is only in a
15 class environmental assessment setting that the degree
16 of evidence about these other ideas and methodologies
17 would ever have been brought forward.

18 It is unfortunate in our submission that
19 while the MNR has indicated in a number of instances
20 that these ideas or methodologies have merit, but that
21 they still want to study it, it is submitted that a
22 regime for implementation should be included in your
23 terms and conditions, the benefit remains that the
24 Proponent and all the parties to the hearing, for that
25 matter those members of the public that have followed

1 the hearing will have benefited and, as Mr. Hanna
2 referred to, the members of the Coalition have
3 benefited.

4 They have participated, they understand
5 more fully and in a more sophisticated fashion the
6 entire array of timber management considerations, they
7 will raise sophisticated difficult questions in the
8 future and if we do not have a planning process that is
9 able to respond to those questions and to live up to
10 the requirements of the Environmental Assessment Act,
11 then I am afraid that we may not have achieved the
12 benefits that are available for this Board to seize.

13 In addition, because of the level of
14 commitment that Mr. Hanna referred to that the
15 Coalition has in respect of conservation matters, and
16 in this case timber management, it should come as no
17 surprise to any of parties that members of the
18 Coalition will likely sit and serve on the local
19 citizens committee.

20 As a result of the Coalition's
21 involvement in this case their involvement will be that
22 much more meaningful. It is submitted it is only in
23 the context of a Class EA process such as this that
24 such a benefit would flow.

25 Perhaps most importantly another benefit,

1 the final one I intend to refer to is the public will
2 know that the planning process which you implement has
3 been done in the context of an impartial hearing, by an
4 impartial body without a vested interest in the
5 outcome, by an impartial body charged with the
6 responsibility and the obligation to ensure that the
7 Proponent has met the requirements of the Environmental
8 Assessment Act.

9 This is the kind of thing that builds
10 confidence and faith in the process. It is submitted
11 that you have the opportunity by imposing those terms
12 and conditions which the Coalition suggests to, in
13 fact, promote that confidence and level of faith in the
14 province.

15 I mentioned earlier that your decision
16 will be of great interest to the legal communities.
17 Not solely because it is the first class environmental
18 assessment, but because acting for proponents lawyers
19 will want to know what is it that the Board expects,
20 what is it that the Board feels is necessary under the
21 Environmental Assessment Act.

22 It should be remembered, and this is
23 something I just saw the other day in one of the recent
24 Environmental Assessment Branch Updates, it should be
25 remembered that 76 per cent of the projects in the

1 province recently were approved through Class EA
2 processes, none of which have undergone the rigors of
3 this hearing, but it means that if I am acting for a
4 proponent and I feel that I can avoid or somehow dilute
5 the requirements of the Environmental Assessment Act as
6 a result of your decision you can believe me that it is
7 going to be the first case I am going to refer to in
8 any submissions to the Ministry of the Environment or
9 to any Board that should be referred to to hear the
10 matter.

11 It is a precedent which could have
12 significant impact on three quarters of the projects
13 that come under consideration in this province.

14 Mr. Martel, you have taken us back a
15 number of times to your question about whether or not a
16 proponent go back to square under, and although we do
17 not intend to review all of the discussion at this
18 point, but I have a couple of comments that I
19 respectfully submit should be made at this time and
20 that is the Proponent is going not going back to square
21 one.

22 They are a number of areas where as a
23 result of this hearing the Proponent will be saved a
24 great deal of expense and time, and I referred to it
25 earlier as the fact that unless there is a bump-up

1 there won't be a requirement to undergo the government
2 review, put together a formal environmental assessment
3 document to try and explain to the Ministry of the
4 Environment the environmental assessment process that
5 was used to their satisfaction.

6 The second benefit is they will know the
7 planning process. The great concern, and one that I am
8 certain that the proponents in the RSI application have
9 right now, is how do we know what the planning process
10 is. You may recall that that is a recent decision of
11 the Joint Board which cut off the hearing right at the
12 start saying lack of jurisdiction. They hadn't
13 followed the process.

14 MNR will know the process. They won't
15 have to worry about that. They can direct their
16 attention at other more important matters in the
17 context of developing the timber management plan. Not
18 to say that environmental assessment is not important,
19 but there is no need to review it time in and time out
20 if we get it right in the first place.

21 Madam Chair, Mr. Martel, Volume I, pages
22 12 through 17 of our final argument we deal with the
23 issue of the nature of approval that is granted in a
24 class environmental assessment hearing and also the
25 nature of the approval sought by the Proponent.

1 The question that ultimately, it is
2 submitted, you must answer is whether or not Section
3 5(3), which sets out the requirements which a proponent
4 must meet, applies at the project planning stage level.

5 As indicated earlier, the Coalition joins
6 the MOE in submitting that it is only logical,
7 reasonable and it is legally required that a proponent
8 in a class environmental assessment setting be required
9 to implement the planning process which meets the
10 requirements of 5(3) of the act.

11 If not, we are certain of the possibility
12 it will happen that timber management plans will be
13 approved which will not have lived up to the
14 requirements of the act.

15 Madam Chair, Mr. Martel, I am reminded of
16 a question that was once put to the Coalition with
17 respect of whether or not our case, in effect, meant we
18 were trying to bring in through the back door that
19 which we couldn't bring in through the front.

20 It is submitted, sir, that in fact what
21 the Proponent is proposing is to do just that, that if
22 the Proponent had decided to proceed with 96 - and I
23 believe that's the correct number --

24 MR. FREIDIN: Around a hundred.

25 MR. O'LEARY: Around a hundred - what day

1 of the month is it - with an individual environmental
2 assessment for each of the FMUs, there would be no
3 question that that timber management plan would be
4 reviewed in the context of 5(3) and if it didn't meet
5 those requirements, if there had not been a
6 consideration of a reasonable range of alternatives and
7 a prediction of the net environmental impacts that flow
8 from each and the selection of the best alternative it
9 would be denied.

10 Yet, MNR's planning process, as proposed
11 without our amendments, the Coalition's amendments,
12 clearly does not meet the requirements of Section 5(3)
13 of the act.

14 Mr. Freidin said in his oral argument:
15 You do not need to do an EA act analysis here. The
16 Coalition submits that you do, that that's the law.

17 If the process is approved as MNR
18 suggests, it raises the somehow paradoxical situation
19 where had they proceeded with an individual EA the
20 timber management plan would have been rejected, and
21 yet it would proceed in the context of a planning
22 process because it doesn't require them to live up to
23 the requirements of 5(3).

24 It may be somewhat demonstrative by the
25 fact that several of the amendments that the Coalition

1 has made to the terms and conditions of the proponent
2 include bump-up and that is we have suggested an
3 expeditious means of dealing with bump-up, to the
4 extent possible under the act.

5 The Coalition submits that if the
6 planning process that is implemented and imposed by
7 this Board meets the requirements of 5(3) of the act,
8 it really isn't necessary then to turn around and draft
9 up a brand new environmental assessment document
10 because you have met the requirements of 5(3).

11 It would not be necessary to undergo a
12 government review, but the Ministry opposes that. It
13 is submitted that the reason why they oppose that, the
14 reason why they are fearful of putting forward a timber
15 management plan before an individual environmental
16 assessment is because it wouldn't live up to the
17 requirements of 5(3).

18 MR. FREIDIN: Where is the evidence of
19 that?

20 MR. O'LEARY: Mr. Freidin, it is my
21 submission that that is the interpretation that can be
22 placed on your refusal to accept our amendment.

23 MR. FREIDIN: All right, thank you.

24 O'LEARY: If I may return to the nature
25 of the approval.

1 Again, the distinction that must be drawn
2 between a class environmental assessment and an
3 individual environmental assessment is that in the
4 individual you are looking for something site specific;
5 tomorrow I could go out and start construction perhaps.

6 In this process, what the Proponent looks
7 for is approval of a planning process. MNR never
8 thought, and presumably still doesn't believe, that it
9 is entitled to go put a shovel in the ground tomorrow.
10 It is a planning process they are looking for, one that
11 they can use in the future to ultimately arrive at the
12 determination of the timber management operations that
13 will take place.

14 It is because it is this two-stage
15 planning process that the Coalition and apparently MOE
16 submit that 5(3) of the act must be met.

17 Now, the rationale of course for the
18 Proponent to proceed with the class environmental
19 assessment is that it would be neither fair nor logical
20 for them to require the Environmental Assessment Board
21 or the Ministry of Environment to consider 96 different
22 FMUs. The purpose is to proceed and obtain approval
23 for a planning process which will avoid that
24 duplication and repetition that I referred to.

25 If MNR's terms and conditions are

1 approved, which in effect means that at the planning
2 process level Section 5(3) of the act does not need to
3 be lived up to and its requirements, the Coalition
4 submits that this would suggest that there would be no
5 need for bump-up, that there had been an approval
6 already, a decision by this Board already that all of
7 these FMU activities, that the timber management plans
8 have all been approved.

9 In other words, that the evidence adduced
10 had been sufficient for you to find that each of the
11 timber management plans meet Section 5(3) of the act,
12 but that's not the intent or purpose of class
13 environmental assessments.

14 It is submitted that there is no legal
15 basis, statutory or otherwise, for the Board to
16 conclude that individual timber management projects do
17 not have to meet the same statutory conditions as if
18 the projects were submitted individually for approval.
19 There is no basis in the statute or any decision of the
20 courts or the Board. That is why, in part, the
21 Coalition and the MOE have taken the position that we
22 have.

23 The practical side of it is that if the
24 Proponent is not required to meet the conditions of
25 5(3) at the planning process stage, the effect is that

1 they would have been successful in avoiding the rigors
2 of its application.

3 Now, consistent with the submission that
4 what the Proponent is actually seeking is a Class EA
5 approval of an undertaking is the stated purpose of the
6 undertaking which is to provide a continuous and
7 predictable supply of wood to Ontario forest
8 industries. They are seeking approval for an
9 undertaking on a province wide basis.

10 They did not ask for approval for a
11 continuous and predictable supply of wood within each
12 of the 96 FMUs or whatever number they are. That
13 decision could only be made, your decision, it is
14 respectfully submitted, and to approving a particular
15 timber management plan in each of the FMUs could only
16 be made on a proper evidentiary basis and that the
17 evidence adduce in this hearing has been too general,
18 too generic and necessarily so for such a finding to be
19 made.

20 Indeed, if we just look at back at
21 Exhibit 4 at page 529, the Proponent states this:

22 "The description of the environment
23 need not be detailed, but must identify
24 in a general way those components of
25 the environment which are likely to be

1 affected by the undertaking."

2 That wouldn't wash at an individual
3 environmental assessment level. That is because the
4 Proponent knew this was a Class EA.

5 Madam Chair, Mr. Martel, the Coalition
6 submits that MNR lived up to this promise made early in
7 its environmental assessment document in providing
8 evidence of only a general nature and there are several
9 examples of that.

10 I look first at the impact of timber
11 management on wildlife. There was no attempt made by
12 Proponent to make explicit predictions about timber
13 management impacts on wildlife. The only so-called
14 prediction, if I can use that terms in the broadest
15 sense possible, are those general statements made by
16 the Proponent that there are no significant net adverse
17 impacts if the guidelines are applied. I refer you to
18 Volume 90, page 15,227.

19 Yet there is the evidence of Dr. Page and
20 Mr. Patch when in their hotel room one evening during
21 the course of the Coalition's evidence-in-chief --
22 during their cross-examination, applied the habitat
23 supply analysis modelling to the Red Lake Timber
24 Management plan, a so-called state-of-the-art plan.
25 The only one that has been put in evidence before the

1 Board and I hasten to add -- I understand there is a
2 new and an old version, but I hasten to add that that
3 plan was only put into evidence at our request and our
4 insistence.

5 But these two gentlemen one evening went
6 through that plan and determined that if put into
7 effect the loss of habitat would result in a drastic
8 drop in the population of pine marten, and that's at
9 Volume 355, page 61,851 to -62.

10 Despite unequivocal evidence that a plan
11 for which this impact had not even been thought of or
12 considered will result in such environmental impacts
13 the Proponent remains both unwilling and unable to put
14 itself in a position where it would predict -- not only
15 is that evidence unequivocal, it is uncontradicted.
16 This is evidence from two experts which were recognized
17 by this Board as having the expertise necessary to make
18 such a determination.

19 So what has MNR done? They have hired
20 Mr. Watt and they are going to study the issue, but yet
21 they reject the Coalition's requirement that some sort
22 of a time frame, a fixed regime be set for the
23 implementation of habitat supply analysis modelling.

24 The point that all of this demonstrates
25 is that the Ministry did not bring forward evidence,

1 specific evidence of net impacts at the FMU level
2 sufficient to warrant approve beyond that available in
3 a class environmental assessment setting.

4 The reason? Because they couldn't. They
5 have only recently hired Mr. Watt. They didn't have
6 the ability, yet they have acknowledged in their
7 argument that the Coalition's position on habitat
8 supply analysis may have some merit and its application
9 may have some benefits.

10 Socio-economic impact analysis, another
11 area where it is submitted that the level of detail and
12 the analysis submitted by the Proponent in evidence is
13 a far cry from that which would be required to grant an
14 approval which, in effect, would be approving timber
15 management plans without undergoing a 5(3) analysis.

16 MNR admitted through its witnesses,
17 Volume 104, page 17,443 and Volume 133, page 22,572
18 that they did not have the level of expertise that was
19 necessary. They didn't say necessary, but they
20 admitted that they didn't have the expertise in the
21 area. That tells you, first of all, that they couldn't
22 even lead evidence about socio-economic impacts at an
23 FMU level.

24 Now, to their credit they have admitted
25 at Volume 239, pages 67,598 to -601 that they have some

1 general agreement with the evidence of Dr. Victor who
2 you will recall gave evidence on behalf of the
3 Coalition.

4 However, their response, and this came as
5 no surprise, was that we need to study the issue. It
6 is premature.

7 Yet, in respect of one aspect, remote
8 tourism, Mr. Clark stated in evidence, and I quote:

9 "The extent and significance of these
10 effects on remote tourism [are] not I
11 think clearly understood at the level of
12 the area of the undertaking."

13 That was prior to them hiring Dr.
14 Kubursi, of course, which is something that they have
15 indicated has occurred which at the very least
16 indicates an acknowledgment that they consider
17 socio-economic impact matters of significance to timber
18 management planning.

19 The point, again, is that they did not
20 address it in a level which would allow you to make a
21 determination which is the effect of what they are
22 asking by putting forward a planning process which does
23 not meet the requirements of 5(3).

24 Another area that demonstrates that there
25 is an insufficient evidentiary basis to make a finding

1 amounts to pre-approval of FMU level activities because
2 that's what it has to be. If they do not have to meet
3 5(3) in the future it means they have already shown to
4 your satisfaction that 5(3) has been met at the FMU
5 level.

6 Another area is that of site degradation,
7 and notwithstanding Mr. Freidin's exchange with Dr.
8 Carr who, you will recall, gave evidence on behalf of
9 the Coalition and there was some exchange over whether
10 or not Ontario is the same as British Columbia, MNR
11 admits in their argument that there is a potential for
12 site degradation. They have also stated at Volume 162,
13 page 28,636 that site degradation is not readily
14 noticeable, presumably by the naked eye.

15 So they have admitted that it is a
16 potential and admitted that you may not even be able to
17 see it.

18 Have they come forward and said: We are
19 going to put into effect a process which will, as part
20 of the planning process, analyse and consider site
21 degradation problems? No.

22 But harkening back to the point, they did
23 not introduce evidence despite an admission that the
24 problem may exist and that it may not be readily
25 noticeable. They have not introduced evidence which

1 would substantiate, in effect, your pre-approval of
2 timber management plans.

3 Madam Chair, I am looking at the clock
4 and I see it is a minute or two past twelve. This
5 might be an appropriate time to break for lunch.

6 MADAM CHAIR: We are ready for lunch, Mr.
7 O'Leary. We will be back at 1:30.

8 ---Luncheon recess at 12:00 p.m.

9 ---On resuming at 1:30 p.m.

10 MADAM CHAIR: Good afternoon, Mr. Hanna.

11 MR. HANNA: Good afternoon, Madam Chair.

12 MADAM CHAIR: Mr. O'Leary. Please
13 continue.

14 MR. HANNA: Madam Chair, Mr. Martel, I
15 just wanted to come back to one matter of our animated
16 discussion between Mr. Martel and I about the null
17 alternative. I left one matter unspoken to and I would
18 like to just deal with it now.

19 I said to you, Mr. Martel, that there
20 would be the very rare occasion that I could imagine -
21 and I expect we'd agreed to that outside of this
22 situation - that the null alternative would likely be a
23 preferred alternative, and I said to you that was not
24 the appropriate measure to decide whether an
25 alternative was appropriate as an alternative, and I

1 just want to explain to you what I feel the measure is
2 to decide whether or not you should analyse the null
3 alternative.

4 And the measure is this: What the null
5 alternative does is it's a way of stating the net
6 benefits of taking action, and that's a very important
7 piece of information for this activity and I'll tell
8 you why I say that to you. You've heard from Dr.
9 Newman, you've heard from the public about the matter
10 of trust and lack of confidence in timber management,
11 you've heard from the forest industry - and it's not a
12 submission that the Coalition takes exception to - that
13 there are a lot of benefits coming out of the forest
14 industry and timber management activities.

15 To sell the advantage of this activity,
16 this set of activities, timber management, by analysing
17 the null we're able to go forward and say: Look, look
18 at the tremendous benefits that will arise from these
19 set of activities. It answers that very fundamental
20 question that the public keeps asking: Why are we
21 doing this, why are we destroying those natural
22 forests?

23 Now, there may be circumstances, I
24 agree - they're probably quite rare - where we may go
25 through that analysis and say: Hey, wait a minute it

1 is better to do nothing. All the advantages we thought
2 at the general level, at the generic level in this
3 particular circumstance don't support doing something,
4 we're better not to do timber management in that case.
5 I submit to you that's going to be extremely rare, but
6 even if it's extremely rare when it does occur it would
7 be most unfortunate to make a decision otherwise.

8 So I say to you that I can certainly see
9 if I were here on behalf of the forest industry, from
10 the point of view of regaining public confidence and
11 selling this activity, that the null alternative can
12 play a very significant and important role.

13 Aside from environmental planning
14 principles, the environmental assessment guidelines and
15 all the rest of it, it's a way to say: Here is the
16 advantage of this activity. And I think that is
17 something that you've heard the public say they have
18 some concern with.

19 And I would say to you it's also a way to
20 deal with those that would come forward and say
21 effectively close down the industry. How do we deal
22 with what's been called the tree hugger, whatever, the
23 radical extremist that virtually wants to close down
24 the northern economy. Well, one way to do that is to
25 take the null alternative and evaluate it, put it out

1 on the table: Here is what the implications are if we
2 do that.

3 Now, there's one other thing that I would
4 like to deal with before I turn it back to Mr.
5 O'Leary - I had to take the microphone away from him to
6 get these few moments in - and that has to deal with--

7 MR. O'LEARY: You're running over.

8 MR. HANNA: --that has to deal with the
9 matter that we were just talking about in terms of
10 whether the Board has the evidence before it to approve
11 individual timber management plans through this
12 decision.

13 And Mr. O'Leary was talking about the
14 lack of evidence brought forward in terms of site
15 degradation and wildlife impacts and tourism. I want
16 to make sure that you understand the Coalition's
17 position is not that the proponent did not bring
18 forward that evidence, clearly the proponent brought
19 forward evidence talking about site degradation, I'm
20 sure Mr. Freidin is going to tell you about Mr. Armson
21 and Mr. Greenwood and Mr. Hyunard and who knows who
22 else that they've brought forward talking about site
23 degradation, and rightly they should.

24 And I would submit to you the evidence
25 they brought forward was the appropriate evidence to

1 bring forward in this type of procedure, but I would
2 say to you the type of evidence they brought forward -
3 and I'll just deal with site degradation because anyone
4 can be the same - that type of evidence if they had
5 brought forward for an individual timber management
6 plan, I would be here before you making submissions to
7 you saying that that evidence would be inadequate for
8 you to make a finding because it was too generic.

9 Now, I want to make sure you understand,
10 that's not a criticism of the proponent. I haven't
11 criticized the proponent through the cross-examination
12 or any of the evidence that we've brought forward in
13 terms of: Did they bring forward the right evidence in
14 terms of the level of specificity. That's not a
15 position the Coalition has taken throughout this
16 hearing. What we have been saying is that's a fine --
17 that information is okay in terms of generic approval,
18 we don't agree necessarily with the way they want to
19 predict impacts in the future, but we have taken
20 exception to the level of information they brought
21 forward at the generic level in terms of the
22 activities.

23 So that there's a clear distinction here.
24 When we've taken the position we support this
25 application, we support this application as a generic

1 approval of timber management activities across the
2 province, as a generic approval of the activities to
3 continue, but it is not approval, should not be
4 approval, the Coalition submits, for those activities
5 to be approved at a timber management plan level
6 regardless. That evidence hasn't come forward. That's
7 the evidence that has to be brought forward through the
8 timber management planning process that you will
9 develop.

10 So I want to make sure that that was
11 clearly understood and understood from an evidentiary
12 point of view that the Coalition is not taking
13 exception to the evidence the proponent has brought
14 forward to seek generic approval of this activity. The
15 Coalition does take exception if the proponent is
16 coming to you saying we have provided the evidence for
17 you to approve timber management activities on every
18 forest management unit in the province for the next,
19 whenever your decision is reviewed again, up to 15
20 years, certainly a minimum of nine years based upon the
21 proponent's proposal.

22 So I'll turn it back to Mr. O'Leary. Are
23 there any questions on that one?

24 MR. O'LEARY: Madam chair, I think Mr.
25 Hanna has dealt with that sufficiently from both the

1 evidentiary side of it as well as the legal side of it.
2 I can only add that an analogy could be made would be
3 to grant that which the Province of Ontario is looking
4 for which is essentially pre-approval of FMU activity
5 without, as we submit, the necessity of implementing a
6 planning process which meets the requirements of the
7 Act. You need the same level or detail of evidence as
8 you would in an individual environmental assessment and
9 it's simply proposterous to suggest that that is what
10 should have taken place here.

11 By the nature of the beast a class
12 environmental assessment is intended to look at the
13 undertaking from a generic and general level. For that
14 reason the MOE and the Coalition say you have got to
15 look at a more detailed level during the planning
16 process.

17 The Coalition adopts and supports the the
18 Ministry of Environment's argument on page 32 that the
19 Board has to determine, based on the evidence before
20 it, first, whether the Class EA addresses the
21 components of 5(3) at the Class EA level, the generic
22 general level; and, second, whether the planning
23 process to be implemented in the future for each
24 project within the class is environmentally sound. The
25 test to determine whether it is environmentally sound

1 is whether that process meets the requirements of 5(3)
2 of the Act and is consistent with the its purpose.

3 That a class environmental assessment
4 proponent is required to comply with Section 5(3) at
5 the planning process stage is nothing new, in fact if
6 memory serves me I believe MNR's argument did admit
7 that there are approvals out there that recognize this
8 requirement. An example of that is what is
9 affectionately known as the GO Transit Class EA. In
10 that one the planning process - this is after approval
11 at the Class EA stage - at that the planning process
12 requires a consideration of alternatives to the
13 undertaking, something the MNR refuses to admit is
14 necessary across an area of each FMU. The GO Transit
15 Class EA recognizes that there should be consideration
16 of the null alternative as well as alternative methods
17 at the planning stage.

18 Another example of a Class EA which
19 recognizes such requirements is the Municipal Road
20 Class EA where projects are required to file
21 environmental study reports which are the equivalent of
22 meeting the requirements of 5(3) of the Act. If you
23 look through the specific requirements of what must be
24 included in an ESR, or environmental study report, you
25 see that it has all the material elements that are set

1 out in Section 5(3) of the Act.

2 The bottom line that we must ultimately
3 keep in mind, the fact that what we're seeking to
4 achieve at the conclusion of this hearing is not to
5 allow the proponent to put a shovel in the ground but
6 to approve an environmental planning process which
7 meets the requirements of law.

8 Madam Chair, Mr. Martel, you'll notice
9 that the next area in our Volume 1 of our argument
10 deals with environmental planning principles. It's
11 submitted that it's set out, we believe succinctly, and
12 it's not anticipated that many of the parties will have
13 too much opposition to the philosophy and need for
14 sound environmental planning principles.

15 In the interest of time I plan to move on
16 to the next area we've identified. Perhaps before I
17 do, Mr. Hanna is going to refer to a matter later which
18 is perhaps appropriate to deal with now.

19 MR. HANNA: Madam Chair, Mr. Martel, one
20 of the issues that you raised, I believe it's Board
21 issue No. 7, dealt with the matter of the extent to
22 which good environmental planning coincides with the
23 Environmental Assessment Act, if you recall that area.

24 And I would draw to your attention that
25 the Ministry of the Environment has responded to that

1 on page 180 of their written argument and I would say
2 to you first that the Coalition is in agreement with
3 what is set out in the Ministry's response to that
4 issue and the Coalition would add to it the following:

5 And that is, it's left with the
6 suggestion here that the Board has unfettered liberty
7 to apply terms and conditions that pertain to the
8 undertaking and on that basis leaves some suggestion
9 that there's some discretion for the Board in terms of
10 the application of good environmental planning
11 principles.

12 And our submission is this: Good
13 environmental planning is what the Act is all about,
14 that is what this Act is, and I would refer you to, for
15 example, page 1 and page 3 of the interim guidelines
16 which is in, as you know, Tab 12 of Exhibit 2200B which
17 is the supplement to the Ministry of the Environment's
18 witness statement. And you'll see there that stated in
19 full words the purpose is to lead to good planning and
20 good decisions, and the Act is structured to ensure
21 that you have good environmental planning. That's
22 elegance and brilliance of the way that it's set down.

23 Because of the structure of the
24 Environmental Assessment Act, the Coalition submits the
25 Board does not have discretion as to whether or not it

1 applies good environmental planning principles. The
2 Board is bound to apply good environmental planning
3 principles because that's what's in the structure of
4 the Act.

5 So that when you're looking at terms and
6 conditions - and this is the reason why we put the
7 section on environmental planning principles in our
8 written argument - the Coalition submits that the terms
9 and conditions that you impose have to meet the test of
10 good environmental planning principles.

11 MR. O'LEARY: Perhaps another way to add
12 to that is that the Board's broad discretion in respect
13 of the terms and conditions that it may impose is
14 fettered to the extent that the terms and conditions
15 must be consistent with the Act. I think that is a
16 given that all parties would accept.

17 The next area that I will be addressing
18 is the consistency of the Coalition's case with the
19 stated purpose of the undertaking and the purpose of
20 the Act.

21 As parties have perhaps by now noted and
22 as indicated in Mr. Hanna's comments earlier, the
23 Coalition has adopted the format of the Ministry's
24 terms and conditions with the amendments and additions.
25 One noticeable amendment is the deletion of the goal

1 statement which was set out in Exhibit 1637 which were
2 our original terms and conditions. That is important
3 because it was done to clearly indicate to the Board
4 that we acknowledge the proponent's right to define the
5 purpose of the undertaking and also to show consistency
6 with your ruling several years ago.

7 But it's anticipated that my friend Mr.
8 Freidin will still argue when his times comes in reply
9 that the Coalition proposes terms and conditions which
10 are contrary to the stated purpose of the undertaking.
11 The Coalition rejects this assertion.

12 The purpose of the undertaking, although
13 the words predictable and continuous are used, is not to
14 provide a steady even flow of wood supply. MNR has
15 admitted in argument that there will be instances where
16 the level within an FMU will go up, it may go down, it
17 may be necessary to look to the neighbouring FMUs to
18 supply a particular mill in an FMU or the exact
19 opposite.

20 What flows from that is the possibility
21 that there will be times where there will be no wood
22 supplied in a particular FMU and yet the undertaking,
23 the purpose of the undertaking will still have been
24 met.

25 So there is nothing inimical or

1 contradictory to the stated purpose of the undertaking
2 by the fact that there may be at some point a
3 particular FMU which will not be contributing to the
4 continuous flow of wood fiber or wood supply to the
5 province's forest industries.

6 Continuous supply does not mean the same
7 level all the time. There will be fluctuations and the
8 proponent has admitted that.

9 The Coalition submits that the
10 undertaking of timber management can be met and
11 satisfied using the planning process that it advocates.
12 It is not asking the Board to implement a planning
13 process which would require the proponent to manage or
14 promote non-timber values. That needs to be
15 distinguished from managing the environmental impacts
16 that flow from timber management.

17 Simply put, the Coalition's planning
18 process requires MNR to predict the net environmental
19 impacts associated with a reasonable range of
20 alternative levels of wood supply and then, as required
21 by the Act and confirmed by past Board decisions and
22 the divisional court, select the best alternative.

23 That process is completely consistent
24 with both the stated purpose of the undertaking and the
25 Act and, therefore, there can be no contravention of

1 then MNR to not successfully submit that there has been
2 a contravention or that the Coalition's case is
3 inimical to the stated purpose of the undertaking.

4 And that does bring me to Board issue No.
5 1 where you ask whether or not you have the
6 jurisdiction to impose terms and conditions which are
7 inimical to the stated purpose of the undertaking. In
8 brief, the Coalition submits that the Board is legally
9 obligated to attach terms and conditions to its
10 approval of the undertaking that will ensure compliance
11 with the Environmental Assessment Act and, therefore,
12 the selection of the best or preferred alternative. To
13 do otherwise would contravene and violate the
14 fundamental purpose of the Act as set out in Section 2.

15 It's submitted that the Coalition's terms
16 and conditions in no way are inimical to the stated
17 purpose, but because of the requirement to be
18 consistent with the purpose of the Act the Coalition's
19 planning process provides for consideration of all
20 aspects of the environment.

21 This includes the impact of the null
22 alternative or reduced supply of wood within a
23 particular FMU from a socio-economic standpoint, the
24 impact of a reduction in wood is not forgotten, that's
25 included in the Coalition's planning process,

1 undoubtedly it will be an important consideration
2 during the planning process. The process will lead to
3 the selection of the preferred alternative which will
4 always include consideration of the socio-economic
5 impact of a reduction or a change in the wood supply
6 within that FMU.

7 But in the same way that the Coalition's
8 process requires consideration of those impacts, it
9 also requires, because the Act sets forth the
10 necessity, the proponent to give consideration to other
11 aspects of the environment. It's because of the
12 Ministry's failure to put forward a planning process
13 which includes a means of evaluating the net
14 environmental impacts from the broadly defined
15 perspective of environment in the Act that the
16 Coalition is present and putting forward amendments and
17 suggestions to the terms and conditions.

18 At page 30 of MNR's argument there is
19 what the Coalition submits is a mischaracterization by
20 the proponent of its case. The Coalition has at no
21 time in any document proposed that a formal technical
22 or mathematical optimization procedure as appears to be
23 the suggestion of MNR be used for balancing timber and
24 non-timber impacts. The Coalition accepts Dr.
25 Baskerville's reservations about such formal

1 optimization models, and that's found at Volume 165,
2 29240 to 42.

3 Again, the Coalition's case is simply
4 that the planning process must require the proponent to
5 consider a reasonable range of alternative wood supply
6 levels, predict the environmental impacts associated
7 with each, and then to select the best alternative
8 having a view to the advantages and disadvantages
9 associated with each alternative set of predictions.

10 That the best alternative must be chosen
11 there can be no doubt from a legal perspective, and the
12 support I offer in respect of that submission is the
13 decision of the Divisional Court in re: Joint Board and
14 Ontario Hydro where the court said that in considering
15 the alternatives to, if the Board finds that an
16 alternative to the preferred alternative is better,
17 then the preferred alternative must be rejected.
18 Clearly that means that a proponent is obligated to put
19 forward the best alternative.

20 The Coalition agrees with the argument of
21 the Ministry of the Environment that the Board's terms
22 and conditions, and I quote from page 161 paragraph 4:

23 "...must be structured in a way when
24 implemented the purpose of the
25 undertaking is achieved."

1 The Coalition also agrees with the
2 Ministry of the Environment's submissions that the
3 Board must balance competing timber and non-timber
4 objectives and provide the forest Industry with a wood
5 supply in a way that least impacts on timber and
6 non-timber resources, and that is also located on the
7 same page.

8 This balancing of timber and non-timber
9 resources to achieve the least impact is exactly what
10 the Coalition submits will be the effect of the
11 planning process they offer. The planning process must
12 ensure that the best result in a timber management plan
13 will be the selection of the alternative which
14 satisfies the purposes of the undertaking and has the
15 least impact on both timber and non-timber resources.

16 At page 331 paragraph 3 of MNR's argument
17 they state that:

18 "Regardless of what undertaking the
19 proponent seeks to carry out or for what
20 purpose, the Board must find that the
21 carrying out of the undertaking is
22 consistent with the purpose of the
23 Environmental Assessment Act before
24 approval to proceed will be granted."

25 As you may have judged, we're in

1 MNR cites two important Board decisions,
2 that of the Highway 416 and 89 applications as
3 precedent in support for that statement.

4 Madam Chair, Mr. Martel, that is
5 completely wrong, it is not a proper categorization of
6 the decision in both of those cases. If you look at
7 the bottom of the page MNR has cited important portions
8 of both those cases and the determination that you
9 should arrive at is that these cases state that to be
10 consistent with the Act it must be shown by a proponent
11 that the advantages of a preferred alternative outweigh
12 its disadvantages to the proponent and the people of
13 the province.

14 If the Ministry's erroneous
15 interpretation allowed to stand would permit the
16 acceptance of an alternative where the disadvantages
17 outweigh the advantages so long as the detrimental
18 effects were acceptable. That is not what the Act
19 says, that is not what those cases say. This may be
20 the interpretation they want to give to the Act. It is
21 not one founded in law.

22 MR. FREIDIN: Excuse me. Would you
23 repeat that, please. I'd like to get that down, I
24 didn't get it. You said that would allow acceptance of
25 the undertaking...

1 agreement with that principle. Accordingly the
2 Coalition submits that this Board cannot make a
3 determination that the undertaking of timber management
4 in all cases and at all times in each and every FMU in
5 the province will be consistent with the purpose of the
6 Environmental Assessment Act based upon the planning
7 process that the proponent has offered.

8 In the absence of ensuring, in the
9 absence of requiring the proponent to use a planning
10 process which meets the requirements of 5(3) and,
11 therefore, is consistent with the purpose of the Act,
12 the Board and the people of Ontario will have no way of
13 knowing whether or not timber management plans put into
14 effect down the road actually met the requirements of
15 the Act.

16 Some might ask: What is it that the
17 purpose of the Act requires of the proponent? Well,
18 MNR states at page 32 of its argument that consistency
19 with the purpose of the Act means that the undertaking,
20 and I'm quoting here:

21 "...that the undertaking must
22 contribute to the betterment of the
23 people of Ontario sufficiently that the
24 known detrimental effects are
25 acceptable."

1 MR. O'LEARY: Sorry, your question is...?

2 MR. FREIDIN: Can you just repeat your
3 last proposition of law as to what MNR is proposing and
4 why it's wrong?

5 MR. O'LEARY: Well, you have said, and I
6 have taken it off page 32, that consistency with the
7 purpose of the Act means that the undertaking --
8 beginning at the bottom of page 31 of your argument you
9 do state that:

10 "In previous decisions, the Board has
11 found that the purpose of the EA Act, in
12 referring to the "betterment" of the
13 people of Ontario, is linked to the
14 concept of "need"; that is, in approving
15 undertakings the Board should be
16 satisfied that there is a need for the
17 undertaking, and that in some way
18 contributes to the "betterment" of
19 the people sufficiently that the known
20 detrimental effects are acceptable."

21 And then you cite two decisions, and it's
22 submitted that those decisions speak to the proposition
23 that a proponent must weigh the advantages against the
24 disadvantages, not whether or not the detrimental
25 effects are acceptable.

1 And it's a weighing, a weighing of those
2 advantages and disadvantages that determines for the
3 purposes of the Board whether or not the preferred
4 alternative should be accepted.

5 MR. FREIDIN: Thank you.

6 MR. HANNA: Mr. Martel, I realize the
7 record doesn't show when people shake their heads, but
8 I certainly note it and I think I might, if I could,
9 try that one from a different point of view if it might
10 be helpful.

11 MR. MARTEL: I put a little note in my
12 book I better pull the transcript on this one.

13 MR. HANNA: Well, let me try it from a
14 non-legal point of view and see if it helps.

15 I will be dealing in my submissions later
16 that the question that the Coalition asks themselves
17 is: How do we get this far down the road and get this
18 far wrong? That's what our submissions are. The
19 proponent has missed the mark and how did that happen?
20 We've got a lot of respect for the proponent, as you
21 know, the members of the Coalition are employees of the
22 proponent, we've had a close working relationship with
23 the proponent for a long, long period of time and the
24 submissions that I will be making to you is embodied in
25 the quote that Mr. O'Leary just read to you.

1 We will see throughout much of the
2 evidence and I'll give you a long list of citations,
3 and in fact Mr. Bisschop in his testimony even said
4 several times I have a tendency to concentrate on the
5 negative impacts. And our submission to you is that
6 the fact that the proponent has concentrated on
7 negative impacts, as is evidenced by that statement,
8 has led them down the wrong road, they've taken a wrong
9 turn in the road.

10 And what they've said is: We have to
11 deal with the negatives and get on with what we want to
12 do. The area of concern planning process is based on
13 that principle, the whole concept of how they deal with
14 alternatives and the fact that they don't deal with
15 alternative wood supply is a reflection of that. The
16 constraint management approach is reflective of a
17 concentration on negative impacts as opposed to
18 positive impacts. The proponent has even come forward
19 and said they don't even have to deal with the positive
20 impacts, it's a matter of discretion.

21 Our submissions to you, Madam Chair, Mr.
22 Martel, is that it is incumbent on the proponent to
23 consider positive impacts and negative impacts and once
24 you have to consider positive and negative impacts,
25 advantages, advantages being positive impacts,

1 disadvantages being negative impacts, it takes you down
2 an entirely different road.

3 And it's quite understandable if you
4 think of it from the proponent's point of view, what I
5 suggest to you is the proponent's philosophy on this,
6 that you're dealing with negative impacts, how they
7 could read that interpretation out of those decisions.
8 But if you look at it from the other point of view
9 saying I have to look at the positive and the negative
10 and I have to balance those two issues, when I do that
11 it changed the whole complex and you'll see when I
12 start dealing with habitat supply analysis and I start
13 dealing with how we see predicting impacts that the
14 essence of what we're dealing with there is: Does the
15 proponent have to deal with the positive impacts, does
16 it have to weigh the advantages and disadvantages of
17 the whole environment in arriving at decisions, not
18 just do I have to mitigate negative impacts?

19 MR. FREIDIN: Excuse me. I'd like a
20 citation for where you're referring to where MNR says
21 it doesn't consider positive impacts.

22 MR. HANNA: That was not my words. Those
23 were not my words. My words, Mr. Freidin, was that the
24 proponent may consider positive impacts, and I will
25 give you a citation, it's right out of your argument, I

1 haven't got it at my fingertips right now, but I'll be
2 dealing with --

3 MR. O'LEARY: I will be.

4 MR. HANNA: Well, Mr. O'Leary will be
5 too. We'll provide that to you. The point is, it's
6 not discretionary, it is a requirement of a proponent
7 by the structure of Section 5(3) of the Act that they
8 must consider advantages, they must consider
9 disadvantages; advantages are positive impacts,
10 disadvantages are negative impacts, not just consider
11 detrimental effects.

12 As I say, I will be dealing with this
13 later in my argument, but I think it's something that
14 I've asked myself because, as I say, I've looked at
15 this and said: How could this proponent, well, we've
16 criticized them in terms of their level of
17 sophistication and whatever, but by and large they're a
18 reasonable bunch of people, how could they get so far
19 wrong? The reason they got so far wrong is they
20 concentrated on the negative. And as I say I'll be
21 dealing with that later. I don't know if that helps,
22 Mr. Martel, but that's where we're coming from.

23 MR. O'LEARY: Our concern, Madam Chair,
24 Mr. Martel, is that statement could lead to confusion.
25 And the intent was to make it clear that what those

1 cases stand for is the proposition that there must be
2 an evaluation of the advantages and disadvantages.

3 And as Mr. Hanna has now led us into, the
4 question is: What does that mean? Before we get there
5 the point that I was attempting to make is that the
6 proponent's statement that the known detrimental
7 effects are acceptable is the interpretation you can
8 take from those cases is incorrect, you've got to go
9 further than that, you don't just look, as Mr. Hanna
10 said, at detrimental effects, you must also consider
11 the positive. That's simply wrong in law.

12 Now, Mr. Freidin asked where there was a
13 citation. The reference I interpreted in connection to
14 it, I'm going to have to get the actual case, but Mr.
15 Bisschop did indicate that the environmental assessment
16 process requires a proponent to consider positive net
17 effects as well as the negative associated with each of
18 the reasonable alternatives under consideration in the
19 particular FMU. I'll get that cite.

20 It's acknowledged by the proponent that
21 they are to look at positive. The question arises:
22 Why is that necessary? Common sense alone tells you
23 that where there is a reasonable range of alternatives
24 to be considered those alternatives that have
25 significant positive impacts must be included in that

1 reasonable range. As well, the Act requires by virtue
2 of 5(3)(d), and I'm quoting right from that section of
3 the Act:

4 "An evaluation of the advantages and
5 disadvantages to the environment of the
6 undertaking, the alternative methods of
7 carrying out the undertaking, and the
8 alternatives to the undertaking."

9 And the interpretation that we have
10 placed on this is again supported by Divisional Court
11 in the Joint Board decision. So ultimately where it is
12 submitted that if there are greater positive impacts
13 associated with an preferred alternative if it's not
14 the best alternative must be rejected, and that
15 includes an analysis, an evaluation of the positive and
16 the negative associated with the alternatives.

17 And it's further submitted that where the
18 positive advantages of an alternative can be further
19 enhanced without increasing disproportionately the
20 disadvantages, that alternative would be clearly
21 preferred and considered as a reasonable alternative.

22 The proponent, for example, is required
23 to mitigate negative impacts to the reasonable extent
24 possible, to interpret that as to the point where there
25 is a diminishing return in terms of the investment to

1 mitigate that impact, and to enhance positive effects,
2 again to the point where you've reached a diminishing
3 return in terms of increasing positive impacts.

4 This isn't something that the Coalition
5 has made up, this is taken out of the Ministry of the
6 Environment's interim guidelines page 12, also a view
7 supported by Ms. Dahl at page 64897 and 8 of Volume 373
8 where she said, and I quote:

9 "Where you have an opportunity to
10 enhance a positive impact the Ministry
11 certainly wouldn't disagree with that. I
12 think it would be desirable to do that if
13 you have the opportunity and it is
14 reasonable to accomplish."

15 A little later at pages 64898 and 9 in
16 response to a question about whether enhancement
17 measures are part of the process of developing net
18 effects the same way that mitigation measures are part
19 of the process that deal with negative impacts, Ms.
20 Dahl responded, and I quote:

21 "Yes, I think where we have an
22 opportunity to enhance a positive effect
23 and it's reasonable to do that, then that
24 should be considered in your net effects,
25 yes."

1 Now, Madam Chair, Mr. Martel, if what the
2 proponent means where it says it is not necessary --
3 I'll start that again. If the proponent here means
4 that it is not necessary to select the best alternative
5 where it states at page 32 of the argument that the
6 betterment of the people of Ontario does not require
7 nor is equivalent to enhancement or optimization of the
8 environment, the Coalition states that such a context
9 should be rejected given the legal interpretation of
10 the decisions, the important evidence of several
11 witnesses, and the illogical result that would follow.

12 The Coalition submits that MNR should be
13 asked to recognize that it is the purpose of the
14 undertaking which defines the alternatives, it's the
15 purpose of the Act, Section 2 of the Act which defines
16 the preferred alternative. This alternative must be
17 better than the other alternatives including the do
18 nothing alternative.

19 Now notably by its absence on page 33 of
20 the proponent's argument is any reference to the Board
21 having jurisdiction to impose terms and conditions of
22 approval which deal with potential positive effects of
23 timber management actions on non-timber values. This
24 begs the question as to whether or not the Board has
25 such jurisdiction. The Coalition submits that the Act

1 is clear on this point, that the Board does have
2 jurisdiction to impose terms and conditions.

3 First, we go back and look at the
4 process, the second decision that a Board must make is
5 whether or not to approve the undertaking with or
6 without terms and conditions. And the Act sets out in
7 Section 14 those sort of matters that it prefers to
8 deminister, but that's interpreted as meaning
9 yourselves in the situation where the decision has been
10 referred to you, sets out those matters that are to be
11 considered when deciding whether or not to approve an
12 undertaking with or without terms and conditions. And
13 at 14(b) the Act states that:

14 "You should consider to give approval
15 to proceed with the undertaking subject
16 to such terms and conditions as the
17 Minister considers necessary to carry out
18 the purpose of this Act."

19 And it goes on to list a number of
20 specific areas, but by no means is that intended to be
21 exhaustive.

22 The important point is it says considers
23 necessary to carry out the purpose of this Act. The
24 purpose of the Act includes the wise management of the
25 environment, it includes the requirements of 5(3) to

1 conduct an evaluation of the advantages and
2 disadvantages as interpreted by past proponents, by
3 past boards and clearly the MOE, that means to enhance
4 positive impacts where reasonable.

5 MR. HANNA: Mr. Martel, Madam Chair, just
6 to respond to Mr. Freidin's request for the quotation,
7 it's on page 32 of the Ministry's argument in the first
8 full paragraph, and I'll read it to you because I think
9 it will make it clear in terms of the significance we
10 are attaching to this. The Ministry states:

11 "Undertakings also have positive
12 effects (e.g. the creation of jobs or the
13 provision of some other benefit to the
14 proponent or other person) which will
15 help to balance the negative effects of
16 carrying out the undertaking and thereby,
17 in terms of the overall public interest,
18 make those negative effects more
19 acceptable. Where it is reasonableness
20 to do so, the proponent may seek to
21 increase or "enhance" the positive
22 effects of the undertaking, and to do so
23 would obviously not be inconsistent with
24 the EA Act."

25 Our submissions to you are that the

1 proponent must seek to increase or enhance positive
2 effects and not that it would be obviously not
3 inconsistent with the EA Act, but that it would be
4 inconsistent with the EA Act to not do so.

5 The Act requires you to look at the
6 advantages and disadvantages to select the preferred
7 alternative that offers the best balance of advantages
8 to disadvantages for the people of Ontario or a part
9 thereof.

10 MR. O'LEARY: If I may add to that, there
11 is no statutory basis for the Board to consider its
12 ability to impose terms and conditions which speak to
13 positive impacts, there's no statutory authority to
14 limit your jurisdiction to impose such terms and
15 conditions.

16 Madam Chair, Mr. Martel, I'm going to
17 move on now to land use allocation which is the next
18 area in our summary that we passed out this morning and
19 I'm going to attempt to do this very quickly because
20 we're behind.

21 But before I do, may I enquire as to
22 whether or not there are any questions with respect to
23 the last submissions?

24 In respect of the heading we have
25 entitled land use allocations, I propose to deal first

1 with the purpose of land use allocation. The Coalition
2 submits that the issue of land use is a red herring but
3 it admits that this Board does not have the
4 jurisdiction or is not in the business of allocating
5 specific lands to uses other than timber management.
6 But that is completely different from the process of
7 weighing the advantages and disadvantages of the
8 environmental impacts associated with a reasonable
9 range of alternatives.

10 Mr. Hanna said this morning we're not
11 looking for the Board to set aside certain amounts of
12 land as a result of this decision, we're looking for
13 the implementation of a reasonable planning process
14 which would consider the environmental impacts of
15 timber management across the broad definition of the
16 environment and as a result of that net effects
17 analysis which is required under the Act to arrive at
18 the best alternative.

19 Just to be clear - I hope we have so
20 far - to accept or reject the best alternative in terms
21 of timber management is not in terms of land uses.
22 You're going to look at a reasonable range of
23 alternative wood supply levels, that would include the
24 null, that would include different levels of wood
25 supply. You will then, in respect of each of those

1 reasonable range of alternative wood supplies, predict
2 the environmental impacts associated with each. With
3 these predictions you can sit down and weigh the
4 advantages and disadvantages that flow from each, and
5 that discussion leads you to the determination of the
6 best alternative.

7 MR. HANNA: The distinction that we're
8 making in this matter is as follows: This Board and
9 through its jurisdiction and ultimately through the
10 planning process can accept or reject timber management
11 activities on a specific piece of land. What this
12 Board cannot do, this Board cannot say we reject timber
13 management as being the best use on this piece of land
14 and we instead think that remote tourism is
15 appropriate, because that would be allocating that land
16 to a use and that would be land use planning, that
17 would be a land use decision.

18 What the Board can do is say, and through
19 the planning process that you approve, can say: We're
20 going to look at timber management activities on a
21 particular piece of land, we're going to evaluate the
22 advantages and disadvantages to the environment in its
23 broadest sense, we're going to make a determination
24 whether the impacts that are associated with that
25 proposal are positive and negative and whether

1 acceptable. On the basis of that we're either going to
2 accept or reject an application or if it's an
3 alternative method you can modify the alternative
4 method, but you cannot go and say that land is better
5 used for remote tourism, it's not within your
6 jurisdiction and we support the submissions by the
7 Industry and the proponent in that respect. And that's
8 the distinction.

9 And the Coalition is not coming forward
10 to this Board and asking you in any of its terms and
11 conditions, in any of its evidence to set aside an area
12 for remote tourism, to set aside an area for wildlife
13 habitat, to set aside an area for biodiversity. What
14 we're asking this Board to do is to put in place a
15 process to decide on the acceptability of timber
16 management activities and the acceptability in the
17 context of the environment as defined in the Act.

18 And I hope that distinction is clear
19 because unfortunately much of our proposals have been
20 dismissed on the basis that we are basically asking for
21 land use and our submission to the Board is we are not,
22 there is nothing in any of the terms and conditions,
23 any of the evidence that the Coalition has brought
24 forward that has asked this Board to make a land use
25 decision other than to accept or reject timber

1 management as an acceptable activity on a land base.

2 MR. O'LEARY: Mr. Hanna has taken you to
3 page 83 of the proponent's arguments where they say
4 an alternatives to at the FMU level are land use
5 matters that go beyond timber management being land use
6 decisions.

7 I said at the outset of this portion of
8 the argument that I submitted this is a red herring.
9 For the reasons Mr. Hanna just set out that is why it
10 is a red herring. The attempt is, respectfully
11 submitted, the attempt is by the MNR to confuse and to
12 suggest to you that you are precluded from implementing
13 a planning process which would require the proponent to
14 consider a reasonable range of alternatives to because
15 they fall into their broad definition of land use
16 decisions.

17 For the reasons I mentioned a few moments
18 ago about your broad discretion to impose terms and
19 conditions, it is submitted once again that no such
20 restriction on your ability to impose terms and
21 conditions, which might be according to the MNR land
22 use decisions, exists. You're not precluded from
23 making a decision that would impose a planning process
24 which would require a consideration of a reasonable
25 range of alternative wood supplies to follow through to

1 the conclusion that you would select the best
2 alternative amongst that reasonable range of
3 alternative wood supplies, having a view to the
4 weighing of the advantages and disadvantages of the
5 environmental impacts associated with each.

6 It is submitted that your discretion is
7 not fettered in any way and that is supported by the
8 Ministry of the Environment. The Ministry of the
9 Environment goes that much farther and states that
10 there's been some reference to the district land use
11 guidelines as being some further imposition on your
12 ability to impose terms and conditions which it refers
13 to as land use in nature. Well, the district land use
14 guidelines is simply that, guidelines, they have no
15 legal basis, no binding basis on this Board. The
16 guidelines can be changed, they have not undergone an
17 environmental assessment.

18 And, finally, as also pointed out by the
19 MOE, they don't say that timber management must take
20 place on these lands, they say it's a permitted use,
21 but permitted - admittedly this isn't stated explicitly
22 but it certainly logically flows from statutory
23 requirements - permitted subject to the lawful
24 determination under the Environmental Assessment Act
25 that that use should be permitted in light of the net

1 environmental effects associated with timber management
2 activities.

3 The final point I wish to raise in
4 respect of their position is that it is somewhat
5 inconsistent because their area of concern planning
6 process itself amounts to a land use decision process
7 and they're putting that forward in their terms and
8 conditions, they're saying you're entitled to impose
9 that term and condition upon them, but somehow they
10 feel required to restrict your ability beyond that.

11 Madam Chair, that brings me to the end of
12 my initial submissions, a little bit longer than we
13 thought but the nature of the profession.

14 MR. HANNA: I realize this may be
15 somewhat to the dismay of Mr. Freidin and some of the
16 other counsel in the room, but we're now going to move
17 to the evidentiary side of the things as opposed to the
18 process and legal side of the matters before you.

19 And I would like to start off first with
20 the matter of biodiversity, and I'll start off by
21 saying that the Coalition submits that its proposals to
22 manage terrestrial ecological impacts from timber
23 management, and those proposals are described in the
24 volume 2 of the written argument and in terms and
25 conditions that are in volume 3.

1 The Coalition submits that its proposals
2 are, No. 1, necessary, necessary immediately; 2, that
3 their proposals are practical; 3, that the proposals
4 are effective and technically sound; 4, that the
5 proposals are affordable; 5, that the proposals are
6 flexible and compatible with the initiatives being
7 undertaken outside of this hearing by the proponent and
8 with the new directions in timber management planning
9 that the proponent is setting out in its terms and
10 conditions; and, 6, that the Coalition proposals are
11 superior to any other proposal by any other party to
12 this hearing to deal with biodiversity impacts.

13 The Coalition bases this position upon
14 the following. I'm going to deal with the following
15 issues in my submissions on biodiversity. I would like
16 to first deal with the matter of the jurisdiction to
17 impose terms and conditions dealing with biodiversity
18 impacts. I would like to deal next with the
19 significance of biodiversity impacts arising from
20 timber management. I'll briefly examine the positions
21 of other parties in terms of managing biodiversity
22 impacts and comparing those proposals to proposals
23 brought forward by the Coalition. I'll briefly
24 describe the Coalition's proposal to manage timber
25 management impacts as set out in their evidence. Then

1 I will go through a process of evaluating the
2 Coalition's proposals in terms of practicality,
3 effectiveness and affordability and, finally, I will
4 deal with the findings that the Coalition is asking the
5 Board to make with respect to biodiversity impacts.

6 Dealing first with the Board's
7 jurisdiction to deal with biodiversity impacts. The
8 Coalition submits that the Board must be satisfied to
9 the answers to two questions in order to find that
10 their terms and conditions dealing with biodiversity
11 impacts are within its jurisdiction.

12 The first question is: Is biodiversity
13 as defined by the Coalition in their panel 6 witness
14 statement and through their evidence within the scope
15 of the environment as defined in Section 1(c) of the EA
16 Act; and, secondly, the Board must be satisfied that
17 forest biodiversity can be impacted by timber
18 management activities within the area of the
19 undertaking.

20 The Coalition submits the answer to both
21 is yes. Yes, biodiversity is within the scope of the
22 environment, yes, there are significant impacts of
23 timber management activities on biodiversity.

24 In terms of is it within the definition
25 of the environment, it somewhat goes without saying

1 that there certainly is evidence before you describing
2 what biodiversity is and I will just give you a few
3 citations of that. It's in Exhibit 2085 on page 10,
4 it's in the transcripts in Volume 383 page 66121, and
5 in Volume 383 page 66121. That's the evidence of Drs.
6 Welsh and Thompson.

7 Now, dealing with the matter of can
8 biodiversity be impacted by timber management
9 activities. I think it's best to look at that by an
10 activity by activity basis; in other words, look at
11 each of the timber management activities and determine
12 whether or not they can impact on biodiversity.

13 Dealing first with harvest. The
14 Coalition submits to you that harvesting mature natural
15 forest has a direct and significant impact on
16 biodiversity, not necessarily negative, not necessarily
17 positive. This seems somewhat trivial to suggest
18 otherwise, that you go into a mature virgin forest or
19 even one that's a second growth forest and change the
20 structure of that forest dramatically that you don't
21 change biodiversity.

22 The magnitude and duration of these
23 impacts will depend on the stand and forest management
24 unit level conditions. There's a variety of evidence
25 before you supporting that statement, Volume 351 page

1 61191, Exhibit 2093, pages 160, 161, 167, Exhibit
2 20785, Tab 17 and Tab 16.

3 In terms of the duration of effects, I
4 refer you to Exhibit 2085 Tab 18 page 8. This is the
5 paper in which Dr. Thompson is looking at impacts of
6 timber management on marten and he says:

7 "Under two conditions timber
8 harvesting has long-term (greater than
9 one rotation) effects on American marten.
10 A second growth forest type --, "The
11 first is second growth forest type is not
12 favourable to American marten even in the
13 mature state."

14 In other words, the forest you bring back
15 is not suitable habitat for marten so you've got
16 long-term duration impacts for marten in that
17 circumstance.

18 "Or the second is that logging proceeds
19 at an unsustainable rate so that
20 insufficient habitat is available over a
21 long enough period of time to result in
22 extirpation of American marten from the
23 local fauna."

24 And I submit to you that the evidence of
25 Mr. Page and Dr. Patch in panel 7 showed to you that if

1 timber management is carried out as proposed in the Red
2 Lake Timber Management Plan that Dr. Thompson's
3 prognosis will in fact come to fruition in Red Lake.

4 So in that sense it's clear that
5 biodiversity, and particularly this particular species
6 which is one element of biodiversity, can clearly be
7 impacted by timber management activities, that the
8 impacts can be significant and they can be of long
9 duration.

10 Turning to the matter of renewal, can
11 renewal activities impact biodiversity. As you've
12 heard extensive evidence, renewal techniques play an
13 important role in the structure of the succeeding
14 forest. That indeed is the whole purpose of renewal
15 activities, to try to alter, to try to control, to try
16 to manage the succeeding forest. Stand structure in
17 terms of vegetation composition is an important feature
18 of biodiversity. As a result it follows directly in a
19 logical sense and logically that renewal activities
20 have the potential for significant impacts, again not
21 necessarily negative, maybe positive, but they
22 definitely have potential for a significant impact on
23 biodiversity both at the stand and forest level.

24 Turning to maintenance, do maintenance
25 activities have the potential for impacting on forest

1 biodiversity. I submit to you, Madam Chair, Mr.
2 Martel, that I feel somewhat insulting to have to have
3 say these things to you after four and a half years, I
4 feel you probably know more about maintenance than the
5 average forester in the province. You've heard about
6 maintenance, you know what maintenance is, it's tending
7 the forest, it's controlling the structure of the
8 forest, it's managing it towards a certain desired
9 objective and end.

10 By intervening in the forest structure,
11 by changing the forest structure, positively or
12 negatively, I'm changing the biodiversity of the
13 forest. Because of the all-encompassing nature of
14 biodiversity and the complexity of natural ecosystems -
15 and you've heard Dr. Thomas come to you and he cited to
16 you the statement that natural ecosystems are more
17 complex than we think and that natural ecosystems are
18 more complex than we can think - biodiversity is a
19 reflection of that, biodiversity is a reflection of the
20 complexity of a natural system in all of its elements.

21 Timber management, the intervention by
22 man into forests, is a direct intervention into the
23 biodiversity of the forest, not necessarily negative
24 not necessarily positive, but it definitely is an
25 impact.

1 The Coalition submits that the only
2 conclusion this Board can reach is that biodiversity
3 impacts are within its scope of jurisdiction. By the
4 broad definition of the scope of the environment in the
5 Environmental Assessment Act and the potential for
6 significant impacts arising from timber management
7 activities exist, and it is submitted as a result that
8 the terms and conditions that the Coalition has
9 proposed to deal with biodiversity impacts, the impacts
10 of timber management on biodiversity are within the
11 jurisdiction of this Board.

12 I'd like to turn just briefly - I won't
13 say briefly, I won't say that, regret that I said it -
14 but I would like to turn anyways to the matter of
15 significance of biodiversity impacts.

16 And I submit to you that for this Board
17 to determine the significance of biodiversity impacts,
18 and that that should be a factor in your decision in
19 terms of what weight, what attention you give to it in
20 the terms and conditions, you must answer two
21 questions. The first is: Is biodiversity an important
22 characteristic of the natural environment of a forest,
23 is it worthy of special attention in this Board's
24 decision?

25 The second question this Board must

1 answer for itself: Are the impacts of timber
2 management on biodiversity significant in terms of
3 their magnitude, their duration and their frequency?

4 The Coalition submits that the answer to
5 both those questions is yes. Yes, biodiversity is an
6 important characteristic of the forest. The proponent
7 has agreed to that, the Industry has agreed to that in
8 their statements by Mr. Innes during their Panel 10,
9 clearly FFT is of that opinion, and I can tell you that
10 the Coalition is clearly of that opinion.

11 Secondly: Are the impacts of timber
12 management on biodiversity significant in terms of
13 magnitude? This undertaking comprises - I forget the
14 number, I'm not much good in those kind of numbers -
15 but it's a big part of the province.

16 As currently planned by existing timber
17 management activities and district land use guidelines
18 these activities are proposed to incur over virtually
19 the great majority of that land mass. It follows that
20 the magnitude of the impacts, because of the magnitude
21 of the activities over time on that land base, are
22 large.

23 I'm not saying to the Board whether
24 they're positive or negative, but I'm saying to you the
25 impacts are large, they have to by the very nature of

1 what we're doing in the forest be large.

2 In terms of duration, I will be dealing
3 with the matter of duration as a separate topic in oral
4 argument, but let me just say that the position of the
5 Coalition is unequivocal on this matter and, that is,
6 when you cut down a mature forest that has taken a
7 hundred years to grow or more you're looking at another
8 hundred years before you got the forest back. It's
9 that simple. Unless somebody is going to go into the
10 business of transplanting trees from who knows where
11 and replanting the trees that we cut, it's a hundred
12 years till that forest is back. That's a long time in
13 my books. Those are long-term impacts, the Coalition
14 submits to this Board.

15 In terms of frequency, it's quite
16 obvious, these activities occur on an ongoing and
17 recurrent basis throughout the area of the undertaking.
18 That's been the evidence of the proponent. I don't
19 think that is in dispute.

20 The Coalition's position is every time
21 you do timber management you're intervening in the
22 forest biodiversity, therefore, every time you're
23 undertaking timber management activities you're having
24 an impact on forest biodiversity. So clearly it's a
25 very frequent issue.

1 The Coalition submits that the Board
2 should conclude that given the significance of
3 biodiversity in terms of the forest ecology and in
4 terms of the public's perception and views of their
5 forest and the potential for significant impacts
6 arising from timber management activities on
7 biodiversity that this matter is worthy of the Board's
8 attention in prescribing terms and conditions.

9 I would like to briefly go through now
10 some of the positions taken by the other parties in
11 terms of biodiversity. Madam Chair, I see you looking.
12 What time would you like to break for lunch - lunch,
13 excuse me - for the afternoon?

14 MADAM CHAIR: If it's convenient for you,
15 Mr. Hanna, we normally take our break at this time.

16 MR. HANNA: Whatever is convenient for
17 you, Madam Chair.

18 MADAM CHAIR: We will take our afternoon
19 break then now.

20 ---Recess at 2:45 p.m.

21 ---On resuming at 3:00 p.m.

22 MADAM CHAIR: Mr. Hanna.

23 MR. HANNA: Madam Chair, just before the
24 break I was going to go into the matter of the
25 positions of the other parties in terms of

1 biodiversity.

2 Before I do, I was reminded by Mr.
3 O'Leary at the break just to perhaps make sure we
4 understand the context of where I'm going now, and the
5 context is this: There are a number of matters that,
6 as part of a class environmental assessment, are
7 appropriate for this Board to rule on and rule on in
8 this sense: You will be prescribing through your terms
9 and conditions a planning process.

10 One of the matters that I raised in my
11 opening address was the need to balance provincial
12 direction with local flexibility, and I know you've
13 never heard those words before, but what I mean -- or I
14 think from the point of view of the approval that you
15 will be giving or that you will be considering is how
16 much direction will you provide.

17 I submit to you that you are the
18 provincial direction because, your decision will be
19 that provincial -- provide some provincial guidance as
20 to what occurs at the local level, and it's important
21 for you in your decision to decide on what is the
22 appropriate level of guidance that you will provide at
23 the highest level.

24 The Coalition does not support a number
25 of proposals which would essentially meet provincial

1 guidance at the highest level that would lead to
2 inappropriate solutions in many cases and I am speaking
3 specifically about proposals, for example, by FFT for
4 clearcut sizes. I know there's been some, how shall I
5 say, discussion about how to actually interpret that,
6 but our interpretation of that is that it would in fact
7 result in a specific application of a clearcut size in
8 the majority cases. It's for that same reason that we
9 reject the proposal by the Ministry of the Environment
10 to interpret the moose habitat guidelines in a more
11 restrictive way; in other words, a 130-hectare limit is
12 a limit and can only be deviated with specific reasons.

13 Those are potentially provincial
14 directions that this Board could make. They aren't
15 provincial directions that the Coalition supports but
16 they are certainly consistent with that genre of
17 direction that you could provide.

18 The important or the most difficult
19 challenge you're faced is balancing that matter of
20 ensuring that your will in your discretion and the
21 knowledge and experience that you've gained through
22 this hearing that you brought to the hearing is carried
23 through in the planning that occurs and, at the same
24 time, doesn't unnecessarily fetter timber management
25 planners so they end up having to follow the book even

1 though it's not the best way to do it. It's that
2 balance that has to be achieved.

3 Biodiversity in what I'll be dealing with
4 in terms of featured species and habitat supply
5 analysis fall within that type of direction that we're
6 asking the Board to exercise. We're asking the Board
7 to provide to timber management planners some
8 provincial direction some - I don't want to use the
9 word guidelines, the Board help me - some direction in
10 terms of how to carry out those activities, some limit,
11 some context within which they should carry out those
12 activities, and it's in that way that the biodiversity
13 terms and conditions come into effect in your decision.
14 We're asking you to approve those terms and conditions
15 as a basis to provide provincial direction at the
16 forest management unit level to deal with this
17 difficult issue.

18 Now, moving to the positions of the other
19 parties. Dealing first with the position of the
20 Ministry of Natural Resources. The Coalition submits
21 that the Ministry through it's evidence has clearly
22 stated that biodiversity is a significant
23 characteristic of the forest and that it can be
24 impacted by timber management activities.

25 The Ministry and the OFIA have taken the

1 position in their arguments, both written and oral,
2 that management of biodiversity is not part of timber
3 management and, in particular, they have indicated that
4 management of biodiversity - and that's the words - is
5 not part of timber management.

6 The Coalition supports those submissions.
7 It is not appropriate as part of this undertaking, as
8 part of the purpose of the undertaking to bring forward
9 proposals to manage for biodiversity, biodiversity in
10 its own respect for biodiversity sake alone.

11 The Coalition submits that it is not
12 proposing management of biodiversity. The Coalition
13 submits that it's proposing the management of timber
14 management impacts on biodiversity.

15 As a result, and as I indicated earlier,
16 the Coalition submits that the arguments presented
17 against the Coalition's proposals should be rejected by
18 the Board because they are not a fair characterization
19 of what it is that the Coalition is proposing or asking
20 this Board to approve.

21 Now, in terms of the Ministry of Natural
22 Resources, the Coalition submits that it has made no
23 specific proposal to manage timber management impacts
24 on biodiversity at a forest management unit level as
25 part of routine timber management plans. That proposal

1 is no where in the terms and conditions the Ministry
2 has brought forward. What the Ministry has proposed --

3 Yes, I'm sorry.

4 MR. MARTEL: Can I get that again.

5 MR. HANNA: The Coalition submits the
6 Ministry has made no specific proposals to manage
7 timber management impacts on biodiversity at a forest
8 management unit level as part of routine timber
9 management planning. What the Ministry has proposed is
10 a number of initiatives outside of timber management
11 planning and I would say to you effectively outside the
12 discretion of this Board.

13 The Ministry has come to you and said,
14 trust us, we will take care of it, it's in the works,
15 we recognize there's a concern, give us some time we
16 will take care of it. We won't tell you how, we won't
17 tell you when and we won't tell you how we are going to
18 decide, but we will take care of it, trust us, Board.

19 The only proposal the Ministry has come
20 forward with to deal with biodiversity is its featured
21 species management approach which the Ministry's own
22 witnesses have admitted is seriously deficient, it will
23 not deal with all of the wildlife species impacts in
24 the forest, it will deal with between 20 and 30 per
25 cent -- it will not deal with between 20 and 30 per

1 cent of the vertebrate species. You've heard that
2 evidence.

3 It's important to note in the Ministry's
4 argument that they have not attempted, or their
5 evidence, to invalidate on a practical basis the
6 approach proposed by the Coalition to manage
7 biodiversity impacts. I will submit to you there is a
8 certain reason for that, and that is this: The one
9 argument that was brought forward or that was raised to
10 our witnesses in cross-examination was the absence of a
11 forest ecosystem classification system across the area
12 of the undertaking. And I would ask the Board at its
13 leisure to look at our terms and conditions on
14 biodiversity management and you'll see that there has
15 been a change made.

16 The Coalition has proposed that its terms
17 and conditions in terms of biodiversity management need
18 not be applied strictly using the FEC system,
19 preferrably FECs but not a legal requirement.

20 The Coalition has made provision for the
21 Ministry to use the biodiversity terms and conditions
22 using their standard site type characterization that
23 you're only too familiar with in their FRI, or to use
24 the general standard type site types that the Ministry
25 is proposing to develop.

1 The Coalition submits that as a result of
2 this modification its proposals to implement the
3 biodiversity management approach, approach to managing
4 biodiversity impacts can be implemented today. The
5 data exists within the Ministry of Natural Resources'
6 files today to implement the approach.

7 The Coalition is not saying it should
8 stop there, the Coalition still strongly feels that the
9 Ministry should move forward as quickly as possible to
10 develop a FEC system for the entire area of the
11 undertaking, that it should develop a FEC system which
12 applies to more than just mature stands and that those
13 FEC systems should be mapped using the FRI data. But
14 the only practical barrier that was brought forward has
15 been removed as a result of the change in the
16 Coalition's terms and conditions.

17 I submit to you that the Ministry nor the
18 Industry argued against the Coalition's proposal on
19 technical grounds. Someone came forward and said:
20 Well, look, maintaining a reasonable proportion of the
21 oldest seral state of the forest and ensuring a
22 continous supply of those types is technically not
23 valid. Indeed Dr. Thomas indicated to you during his
24 testimony that the principles and the concepts
25 underlying habitat supply analysis are equally

1 applicable to the concept of biodiversity management as
2 proposed by the Coalition and that that is a
3 technically correct way to visualize and manage the
4 problem.

5 Now, the Ministry has proposed to you to
6 deal with old growth stands as sensitive sites through
7 its area of concern planning process, and you'll find
8 this at paragraph 236 paragraph 3 of its argument. The
9 Coalition submits that the AOC planning process is not
10 appropriate to deal with the issue for the following
11 reasons:

12 First, the area of concern process by its
13 very nature deals only with the isolated sites and does
14 not address forest management unit level. I repeat
15 that because it's very important - this is really what
16 our case is about - it does not, AOC in the way that
17 it's set out, and I'll say to you that moose habitat
18 guidelines, the planning process as conceived by the
19 Ministry of Natural Resources is a stand level
20 management process when it comes to anything but
21 timber, it is not a forest level planning process.

22 Unless you look at timber management
23 activities at a forest management unit level you will
24 not be able to ensure that there is a continuous and
25 predictable supply of wood or that the impacts of

1 providing that wood will be sufficiently managed and
2 dealt with. It is only within the context of a forest
3 management unit level, a forest level analysis of
4 timber management activities that wise management and
5 conservation of old growth and forest biodiversity can
6 be achieved.

7 And I will just read to you the words of
8 Dr. Thomas, this is in Volume 353, page 61489 and,
9 Madam Chair, this was in a response to the question
10 that you were asking of Dr. Page and Dr. Thomas
11 interjected, he said:

12 "Madam Chair, one point that I would
13 make is the approach will work...", the
14 approach being habitat supply analysis, "...will work,
15 you just have to change the objective.
16 If biodiversity becomes the interest and
17 older stands become the critical part of
18 the view, they would merely change their
19 analysis with a different objective, the
20 objective being the production and
21 retention of older stands with particular
22 structure. The principles he's showing
23 you would apply but the objective would
24 change."

25 What I say to you Dr. Thomas was saying

1 to you is this and Mr. page said the same -- sorry, Mr.
2 Patch said the same thing in his evidence, that if you
3 are concerned about timber management activities and
4 managing those timber management activities, you cannot
5 operate at a stand level.

6 Dean Baskerville came and spoke most
7 eloquently on this matter. Dr. Thomas spoke to you
8 about it, Mr. Patch spoke to you about it. Timber
9 management has to be managed at a forest management
10 unit level, it can't be managed at a stand level. This
11 is why we don't support the Ministry of the
12 Environment's proposal in terms of stand allocation
13 alternatives. This is why we support the submission or
14 the evidence of Mr. Bisschop that timber management
15 comprises a set of interrelated activities. They have
16 to be managed, analysed, evaluated as an interrelated
17 set of activities at the forest management unit level,
18 at the forest level. And it's stand level management,
19 constraint management that gets you in trouble.

20 As Dr. Baskerville said to you, you're
21 driving looking through the rear view mirror, you
22 aren't looking ahead, you aren't forecasting how the
23 forest will evolve, you aren't forecasting what the
24 long-term implications of your immediate actions are.
25 The Coalition says wise management of the forest

1 demands that we look at impacts at a forest management
2 unit level, at the forest level over the long term.

3 The area of concern process does not have
4 in it a forecast of a forest level impact; the area of
5 concern process says here's a specific site, here's a
6 specific sensitive concern, let's look at the impacts,
7 positive and negative, and figure out a way to deal
8 with that.

9 What happens 20 years down the road when
10 there's a fire, what happens when it's 20 years down
11 the road when a stand breaks apart for any other
12 reason. Where is the old growth then? Only until you
13 evaluate the forest as a unit and look at the
14 consequences in the long term of your actions can you
15 make wise and reasonable decisions.

16 That's the evidence you heard from Dr.
17 Baskerville, you have heard from Dr. Thomas, you have
18 heard from Mr. Patch and you have heard from various
19 other Coalition witnesses.

20 I would submit to you you also heard that
21 evidence in stays from every forester who's come before
22 you. Every forester who's come before you has said, if
23 you want to analyse wood supply you don't look at the
24 stand level, you have to do an analysis of the whole
25 forest management unit, you have to do a forecast of

1 timber wood supply over a rotation.

2 Ministry of Natural Resources in its
3 terms and conditions says you must calculate MAD for an
4 entire rotation of the forest. Why? You have to
5 conduct a MAD analysis for an entire rotation of the
6 forest because it's only when you look over the entire
7 rotation of the forest that you can understand the
8 implications of your actions.

9 And in the same way that you have to look
10 at an entire rotation of the forest to understand the
11 implications of your actions for wood supply, you have
12 to look at the entire rotation of the forest in terms
13 of your implications in terms of whether it's old
14 growth, whether it's moose habitat, whether it's pine
15 marten habitat, or whether it's remote tourism habitat.
16 The issue is the same, forests take a long time to
17 grow, the impacts are long term.

18 Now, I think it's important, and this is
19 something that I submit to you, I'll say to you was
20 inadvertent, I'll be generous to my friends through
21 association if not through otherwise, that they have
22 looked and said: Here's what we want to do, but they
23 haven't said: Does the Coalition's proposals in any
24 way permit that. And I'll give you an example in this
25 particular circumstance.

1 The Coalition's proposal to manage
2 biodiversity does not in any way preclude the Ministry
3 of Natural Resources to apply its AOC planning process
4 for sensitive sites and those sensitive sites can be
5 old growth forest, perfectly consistent.

6 The AOC process, I submit to you, is
7 appropriate to decide upon site-specific details.
8 What's the actual configuration if you're going to lay
9 out in terms of the cut, what's the details in terms of
10 what in EA jargon is alternative methods. That is an
11 appropriate type of question to ask in the AOC planning
12 process. But if you just have an AOC planning process
13 and you don't have a forest management level planning
14 process you're driving looking through the back view
15 mirror.

16 Now, dealing with the position of the
17 OFIA. The OFIA has submitted that the Coalition has
18 made proposals to the Board regarding management
19 measures to achieve biodiversity. I submit to you
20 that's not an accurate characterization of the
21 Coalition's proposals. The Coalition's proposals are
22 designed to manage the impacts of timber management on
23 biodiversity.

24 The OFIA has submitted that the
25 management to achieve biodiversity does not comprise

1 the purpose of the undertaking nor the planning process
2 related to the activities of timber management and,
3 thus, it is outside the jurisdiction of the Board, and
4 that's at paragraph 100 page 71 of their argument.

5 The Coalition agrees that if a proposal
6 were advanced for purposes other than managing impacts
7 of timber management on the environment and, in
8 particular, it were proposed to propose measures to
9 independently achieve forest biodiversity objectives,
10 that this would be outside the scope of the hearing.
11 That is not in dispute. The Coalition rejects,
12 however, any suggestion that its proposals are anything
13 but an approach to manage timber management impacts on
14 biodiversity.

15 It's ironic that the OFIA in its
16 arguments goes on and uses as a basis to criticize
17 Forests for Tomorrow's silvicultural proposals on the
18 basis of its impacts on forest biodiversity. You'll
19 find that at page 219 of their argument.

20 We don't disagree with their submissions
21 in terms of the impacts of FFT's proposals of forest
22 biodiversity, but it is a little bit of having your
23 cake and eating it too. You can use the biodiversity
24 impacts as a reason to argue against FFT's proposal,
25 and use it in the same breath saying you can't have

1 biodiversity impacts management as part of the terms
2 and conditions of this Board. I'm afraid the logic
3 escapes me.

4 The OFIA proposes that those issues that
5 are related to biodiversity impacts in timber
6 management be deferred to its provincial policy and
7 technical committee, and you find that at page 71
8 paragraph 104 of its argument. I submit to you the
9 OFIA is taking basically the same position as the
10 Ministry of Natural Resources and, that is, we will
11 study, no, don't worry Board it's in good hands, we
12 will deal with it.

13 And I indicated in my opening address the
14 people of this province have entrusted with you the
15 responsibility to exercise your discretion and
16 authority, and the members of the Coalition employ you
17 to use them, not to defer that authority and discretion
18 to someone else.

19 I submit to you that the OFIA makes no
20 specific proposals to manage biodiversity impacts
21 immediately through operational timber management
22 planning at the forest management unit level at the
23 present time.

24 There's also a suggestion in the OFIA's
25 submissions at page 75 paragraph 118 and 119 that the

1 Coalition's proposals for managing biodiversity is a
2 land use proposal. I submit to you that the Board
3 should reject this suggestion.

4 The Coalition proposals do not preclude
5 timber management as an acceptable land use on the
6 forest, the Coalition proposals simply provides certain
7 conditions that must be satisfied, certain
8 environmental conditions, must be satisfied before
9 timber management can occur on certain types of stands,
10 those stands in the oldest seral state.

11 The matter of land use decisions Mr.
12 O'Leary has already spoken to and I won't go any
13 further, but I submit to you that his submissions in
14 this respect apply in this case.

15 You'll recall, as I indicated previously,
16 that the OFIA's panel admitted that they have no
17 alternative to the Coalition's proposal, that they
18 didn't at that time have a sound technical basis, the
19 primary basis was the matter of FECs and applying those
20 at the present time. You'll find that in the
21 transcripts at page 226 -- I'm sorry, Volume 226, I
22 believe it starts at page 41135, the interchange I had
23 with Mr. Innes on that matter.

24 I would simply state that the Ministry of
25 the Environment, that Ministry that we look to to take

1 care of our environment, offered no alternative
2 proposal to deal with biodiversity. The Ministry by
3 basically endorsing the proponent's terms and
4 conditions is saying wait and see, trust them. And
5 also I guess by default the featured species management
6 approach is adequate.

7 You have heard the position of FFT in
8 terms of biodiversity management. We're certainly
9 concurrent to FFT about the importance and significance
10 of this issue. The issue with FFT is not one of
11 substance but one of process, how's the best way to
12 achieve it.

13 FFT is proposing a separate and distinct
14 forest management approach to deal with biodiversity;
15 namely, the use of landscape management as you've
16 heard, associated with that old growth reserves.

17 The Coalition submits that FFT's position
18 on biodiversity management, No. 1, is unstable, it's
19 changed throughout the course of the hearing; 2, that
20 it is impractical; and, 3, that it's inconsistent with
21 other terms and conditions which the party is
22 proposing, and I refer -- I can see, if you can see.

23 MR. MARTEL: Somebody's telling you
24 something.

25 MR. HANNA: I think it's time to speed

1 up. Maybe the court reporter would like that. I can
2 continue if you wish, or do you wish to wait?

3 ---Discussion off the record

4 MADAM CHAIR: Continue on.

5 MR. HANNA: Madam Chair, I was indicating
6 that the Coalition submits that FFT's proposals are
7 inconsistent in terms of biodiversity management with
8 the other terms and conditions, and we would
9 basically -- our position is that we support the
10 Industry's submissions at page 218 to 220 that deal
11 specifically with FFT's proposals in this respect.

12 I won't take you through all the evidence
13 that came out as a result of the Coalition's
14 cross-examination of the FFT panel 9 evidence, but I
15 will recall simply one statement that I thought, in his
16 normal way Mr. Martel was able to succinctly state what
17 I was trying to do in a very convoluted way, he made
18 the statement that, it sounds like the ink is barely
19 dry on the paper, in terms of the discussion that I was
20 having with Dr. Middleton and Dr. Shuffling regarding
21 their ecosystem supply analysis approach and the
22 landscape management approach that we brought forward.
23 We agree with that and think that that
24 cross-examination demonstrated that clearly.

25 In summary, the Coalition does agree with

1 FFT about the significance and importance of
2 biodiversity, the difference is one of how's the best
3 way to proceed. The Coalition submits that its
4 proposal to deal with timber management impacts on
5 biodiversity effectively addresses the concerns raised
6 by FFT and does not suffer from the same weaknesses
7 associated with the FFT approach and, indeed, doesn't
8 sufficient from any weaknesses relative to the
9 proposals by other parties.

10 I'll just briefly go through, and I
11 believe the Board is fairly clear in terms of what the
12 Coalition's proposing in terms of biodiversity
13 management, I'll just take a moment to try and
14 summarize it if I can.

15 We have attempted in volume 2 of the
16 final arguments to summarize the evidence. It starts
17 at page 8 paragraph 26 and runs through to paragraph 40
18 on page 11. You'll also find further details in volume
19 3 in the Coalition's terms and conditions in Schedule
20 B, and that starts at page 106 and includes terms and
21 conditions 23 through to terms and conditions 27.

22 First, the Coalition submits that its
23 proposals to manage biodiversity are distinct from
24 those proposed by any other party and should be
25 accepted by the Board as a practical, affordable and

1 effective means to deal with biodiversity impacts.

2 The underlying principles on which the
3 Coalition's proposal is based is the philosophy
4 articulated - I hope Mr. Martel you don't take offence
5 to this, but it was something that Mr. Martel said to
6 me and I do listen to what he says - and he said: We
7 should not be trying to do better than nature, and the
8 Coalition agrees with him. What we're trying to do is
9 we're trying to manage the forest not second guess
10 nature.

11 Now, there are certain limits, there are
12 certain bounds within which you operate, but as Dr.
13 Thomas came forward and said to you, we try to keep all
14 of the cogs and wheels - and, as you know, he took that
15 word from the founder of land conservation, Aldo
16 Leopold - all the cogs and wheels, the first thing you
17 want to do.

18 The Coalition submits that its proposal
19 is an effective way to maintain the cogs and wheels, it
20 provides the boundary, the framework, the context
21 within which then we can start manipulating the forest
22 to achieve the many ends that man is trying to achieve
23 from the resource.

24 Madam Chair, Mr. O'Leary here is pulling
25 my pant cuff and telling me I've mis -- not misspoken

1 myself, but I've let myself take too many liberties.

2 The liberty is I think I said manage the forest.

3 The Coalition is not coming forward and
4 proposing you adopt forest management. I'm not saying
5 that forest management isn't an appropriate end, but
6 that's not what the Coalition is proposing to you. The
7 Coalition is proposing to you an approach to manage the
8 impacts of timber management. I must admit I've never
9 been clear about what the difference is between forest
10 management and timber management, but I'm not even
11 going to worry about that quite honestly, all that
12 matters is what the Coalition is bringing forward to
13 you is the proposal to manage the impacts of timber
14 management; no more, no less.

15 Now, there's one thing that I'd like you
16 to bear in mind when you're sitting back and reflecting
17 on all - I'm sure you won't reflect on all of the
18 evidence, I don't think anyone can - but as much of the
19 evidence as a human can assimilate, when you're
20 reflecting on the Coalition's evidence and its
21 submissions to you, I ask you to bear in mind the
22 proposals it's bringing forward to you in terms of
23 biodiversity as an integrated hierarchical management
24 approach.

25 What that technical jargon means is this:

1 It's integrated in this sense, there is integration
2 between what we've called the biodiversity aspect which
3 is the maintenance of the oldest seral state and a
4 supply of that oldest seral state of the forest,
5 integration of that with what we called featured
6 species management, integration with that with the
7 locally significant species, they all work together,
8 they aren't distinct components, they fit one into the
9 other.

10 It's hierarchical in the sense as
11 follows: Biodiversity in terms of maintaining the
12 oldest seral state provides the overall universe within
13 which we operate, it provides the bounds, it's the
14 broadest basis upon which you work within that bound,
15 the highest level of the hierarchy. You then narrow
16 down and start asking yourself questions about: Okay,
17 I'm going to maintain all the cogs and wheels, what
18 patterns and shape am I going to maintain those cogs
19 and wheels on the landscape. And that is where the
20 featured species management comes in.

21 And then the finest level in the
22 hierarchy is: How am I going to deal with those very
23 site-specific concerns of specific species that may not
24 be adequately addressed by the higher levels in the
25 hierarchy.

1 And I submit to you, Madam Chair, Mr.
2 Martel, that when you look at criticisms of the
3 Coalition's proposal that you look at it in the context
4 of that entire system, not parched up into individual
5 pieces; here's the Coalition's proposal for featured
6 species management, here's the proposal by the Ministry
7 of Natural Resources. That's an inappropriate context
8 for the evaluation. If you're going to compare MNR's
9 featured species approach compare it to the entire
10 integrated system; biodiversity, featured species,
11 locally significant species. It's only in that context
12 that you will find that it's a fair and apples to
13 apples comparison.

14 Now, I would like to deal with just some
15 of the specifics that we're proposing in terms of the
16 biodiversity approach, approach to managing the impacts
17 of timber management on biodiversity. And I'd like to
18 note first one of the important aspects of it and, that
19 is, that it is simple, it's simple in concept, it's
20 simple in application, this isn't something that is
21 going to take a six-month course training timber
22 management planners to understand. I submit to you
23 that a timber manager worth his salt can take 15
24 minutes and read those terms and conditions and know
25 exactly what is required. There's nothing complicated

1 here.

2 Now, I would like to look at some of the
3 specific proposals and draw a few points to your
4 attention, and I would ask you to turn up volume 3 of
5 the Coalition's written argument and Schedule B page
6 107 -- I'm sorry, 106, it's term and condition 24.

7 I should note for the record, Madam
8 Chair, Mr. Martel, it would have been preferred to have
9 the terms and conditions numbered consecutively and I
10 suppose I can only plead that we did our best and time
11 was of the essence. You'll find that the terms and
12 conditions in Schedule B have numbers that are the same
13 as the terms and conditions in Schedule A, so that we
14 have to be careful when we say term and condition 1,
15 for example, of the Coalition you're talking about term
16 and condition 1, for example, in Schedule A or Schedule
17 B. They aren't numbered consecutively.

18 Dealing with the biodiversity term and
19 condition 24 on page 106 of schedule B, that term and
20 condition requires that 10 per cent in total of the
21 area of each forest management unit be retained in
22 perpetuity. Now, you've heard, and I think I recall a
23 comment made by the Board - I think it's Mr. Martel
24 again, I hate to pick on you - but it was a suggestion
25 or I think the Board understands that that can migrate

1 across the forest management unit and it's not a fixed
2 piece of the landscape.

3 Now, in order to be able to comply with
4 that term and condition you have to initially decide,
5 have to initially analyse your forest management unit
6 to determine the current proportions of the forest
7 management unit in the oldest seral state. It means
8 you have to do a compliance check, how much of the
9 forest management unit currently is within the 10 per
10 cent category.

11 The important thing is that that is a
12 one-shot exercise; in other words, once you have gone
13 through your forest management unit, you've identified
14 your stand types whether they're general stand types or
15 FECs, you now have that information on hand. In
16 subsequent plans, and as the Ministry's proposing, you
17 simply need to update the database, the FRI database,
18 the database in terms of forest stands and use that
19 then to do a recheck of where you stand in terms of
20 your supply of the oldest seral state stands, you don't
21 have to go through the whole process all over again,
22 it's an updating process, so it becomes much more
23 practical as a result of that.

24 MR. FREIDIN: Is this Dr. Quinney's
25 evidence you're relying on?

1 MR. HANNA: I'm relying on that and the
2 interpretation of term and condition 24 and the wording
3 that's used in that term and condition. I think it's
4 very clear in that term and condition. There's also
5 citations associated with that that are provided in the
6 handout that I've given you and the rationale that is
7 on the opposing page.

8 And Mr. O'Leary has helped me in making
9 sure I say it in the appropriate legalese way, and that
10 is, there's nothing in that term and condition that
11 prevents the Ministry of Natural Resources from
12 interpreting the language in the way that I've just
13 described it.

14 MR. FREIDIN: I was concerned that your
15 submissions are based on evidence and not your
16 evidence, that's all.

17 MR. HANNA: I'm well aware that I'm not
18 here giving evidence, Mr. Freidin. I appreciate your
19 legal advice.

20 One other point that I would bring to the
21 Board's attention is that this term and condition does
22 not preclude timber management activities from
23 occurring anywhere on a forest management unit. They
24 can still occur in the forest management unit, the only
25 requirement is, as these terms and conditions are set

1 out, is that before timber management activities occur
2 the proponent must be able to demonstrate that there is
3 an adequate reserve of those old growth stands
4 available.

5 MR. MARTEL: Well, I think you can hear
6 me. If the 10 per cent is all you have, then that
7 doesn't occur. Let's say you only have 10 per cent in
8 a stand of this particular plan, then in fact that 10
9 per cent is withdrawn from being utilized.

10 MR. HANNA: That would be the case
11 until -- that would be the case, Mr. Martel, until
12 there was replacement stands available.

13 MR. MARTEL: I just want to be clear.

14 MR. HANNA: That's correct. And once
15 replacement stands became available then those stands
16 would be eligible for harvest, and if an appropriate
17 balance of age classes is maintained within the forest
18 management unit, these terms and conditions will allow
19 timber management to proceed unfettered as far as
20 biodiversity is concerned. If that balance is
21 maintained, it's business as usual.

22 The effect of these terms and conditions
23 is a balance of age classes must be retained and that
24 the oldest age-class must be there to maintain
25 biodiversity, some portion of the oldest age-class.

1 Now, I would like to deal with the
2 practicality of this proposal. The Coalition submits
3 that it is practical to implement its approach to
4 biodiversity management or biodiversity immediately,
5 and I've already mentioned to you the change that's
6 occurred, that we have taken out the requirement that
7 the forest ecosystem types be defined by FEC, and you
8 will see that in term and condition 23. It says the
9 current supply of forest types. You see that wording
10 has been changed, it's now:

11 "Forest types (defined by stand types,
12 general standard site types, or
13 preferrably by forest ecosystem
14 classification system types [i.e.
15 FECs])..."

16 As I indicated to you that change is
17 important in terms of being able to implement these
18 terms and conditions today.

19 Now, the Coalition wishes to draw to the
20 Board's attention in these terms and conditions the
21 fact that there is still considerable flexibility
22 provided at the individual forest management unit level
23 and that is provided by the following language in the
24 terms and conditions.

25 The first decision that has to be made at

1 the local forest management unit level is: What will
2 be defined as the oldest seral state. And I would draw
3 to the Board's attention an addition that was made to
4 these terms and conditions, particularly term and
5 condition 26 on page 107, and this has been added to
6 avoid potential abuse of the intent of the flexibility
7 that has been provided for decisions at the forest
8 management unit level.

9 You can see that if a proponent were to
10 define two age classes, and the age classes were very
11 broad in their definition, that the effect of these
12 terms and conditions would be greatly diminished. So
13 what the effect of term and condition 26 is is it
14 changes, it provides some bound in terms of how much
15 you can aggregate these stands.

16 The other decision that has to be made
17 locally is in terms of the characteristics that will be
18 used to decide when the replacement stands are adequate
19 to replace the existing old stands. What are the
20 ecological characteristics that we will use to define
21 these oldest seral state stands.

22 The terms and conditions do not prescribe
23 what those should be. The Coalition submits that would
24 be a monumental job given the complexity of forest
25 ecosystem types across the area of the undertaking and

1 those decisions are appropriate decisions to be made at
2 the local forest management unit level.

3 Now, the Coalition submits that given the
4 simplicity of this proposal, five terms and conditions,
5 clearly articulated, makes the administration and
6 implementation of these terms and conditions for
7 managing biodiversity impacts fully within the
8 technical capability of timber management planners.

9 The terms and conditions are grounded in
10 terminology and concepts common to the current timber
11 management planning process: Age classes, site types,
12 things timber management planners are familiar with.

13 The Coalition submits that its terms and
14 conditions for managing biodiversity are clear and
15 unequivocal, they're easy to understand, they're easy
16 to interpret; they can be interpreted by technical
17 experts, they can also be interpreted by members of the
18 public.

19 Because of the simplicity and clarity of
20 the terms and conditions they are enforceable, and the
21 terms and conditions provide specific measures to
22 evaluate compliance and specific measures to deal in
23 situations where the minimum levels are not provided.

24 On the basis of these facts it is
25 submitted that the Coalition's proposal is practical to

1 implement immediately within the timber management
2 planning process.

3 Dealing now with the matter of
4 effectiveness. The Coalition submits its proposals for
5 managing biodiversity will be effective in the short
6 and long term. It bases this view upon the following
7 facts. 1) as I've indicated, it can be implemented
8 immediately; No. 2, because of the flexibility, this
9 proposal has the ability to accommodate local
10 conditions in all forest management units, as a result
11 there will not need to be exceptions and exceptions
12 becoming the rule.

13 And the important aspect of these terms
14 and conditions is it does not foreclose all of the
15 initiatives that you've heard that the Ministry of
16 Natural Resources is undertaking.

17 The Ministry can still go ahead with its
18 old growth initiative, the Ministry can still go ahead
19 with all of the other initiatives it's come forward and
20 told you about. These terms and conditions are
21 designed to incorporate the results of those
22 initiatives as they become available, and I'll give you
23 an example.

24 As I've told you, the terms and
25 conditions do not define what the ecological

1 characteristics of the oldest seral state will be. As
2 the Ministry comes forward and says here's what we
3 define as old growth, that information can be taken out
4 into the field, it can be taken to the forest
5 management -- or the timber management planners, excuse
6 me, they can be applied within the context of these
7 terms and conditions on an ongoing basis.

8 They're flexible, they can be updated and
9 revised and improved as knowledge improves. When a
10 forest ecosystem classification system comes into place
11 in a timber management unit, bingo, you've got it, we
12 have got. You say: Well, okay fine, here's the
13 context in which we can interpret that new
14 classification system. We don't have to revamp the
15 wheel, we don't have to come back to this Board and
16 say: Can we amend - we won't come back to this Board,
17 that's the broader Board - and ask for an amendment to
18 the approval. These terms and conditions will endure.

19 The Coalition submits also that given the
20 comprehensiveness, simplicity and comprehensibility of
21 its proposals the public will have trust and confidence
22 in the approach, since the public are going to be able
23 to understand it, they're going to be able to see it,
24 touch it, feel it, and know that there is some - I have
25 to say it - hammer there if things don't go right,

1 there's some backstop, there's confidence in that,
2 there's a certain degree of security.

3 Dealing with the issue of affordability,
4 Madam Chair, I would like to finish this but I realize
5 it's four o'clock. I am near the end and I probably
6 will go another 10 minutes.

7 MADAM CHAIR: If it's all the same to
8 you, Mr. Hanna, the Board will adjourn. Since we have
9 to come back tomorrow anyway to hear your argument all
10 day, we can stop today and start tomorrow.

11 MR. HANNA: That's fine. As you know, I
12 have a bad history behind me, but I will speak with Mr.
13 O'Leary and our client tonight and do our best, as
14 always, to be as streamlined as possible tomorrow.

15 MADAM CHAIR: Thank you, Mr. Hanna, Mr.
16 O'Leary.

17 MR. O'LEARY: Thank you, Madam Chair.

18 MADAM CHAIR: See you at nine o'clock
19 tomorrow morning.

20 ---Whereupon the hearing was adjourned at 4:05 p.m., to
21 be reconvened on Tuesday, November 3rd, 1992,
22 commencing at 9:00 a.m.

23
24
25 [BD/MC]



